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Supreme Court of the United States

October Term, 1958

No. 127

WILLIAM MOSER,

Petitioner,

—v.—

NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR CERTIORARI FILED AUGUST 18, 1958
CERTIORARI GRANTED MAY 11, 1959

Supreme Court of the United States

OCTOBER TERM, 1969

No. 127

WILLIAM MONKS,

Petitioner,

—v.—

NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY

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STATEMENT OF RELEVANT DATES IN LIEU OF DOCKET ENTRIES

March 1, 1957	Petition for Adjudication of Delinquency in Case No. J-1359 (Chambra), filed, Juvenile and Domestic Relations Court of Passaic County
March 1, 1957	Petition for Adjudication of Delinquency in Case No. J-1360 (Weiss), filed, Juvenile and Domestic Relations Court of Passaic County
December 3-11, 1957	Trial of both petitions, Juvenile and Domestic Relations Court of Passaic County
December 11, 1957	Orders adjudicating defendant a delinquent and committing him to New Jersey Reformatory at Bordentown, in Case Nos. J-1359 and J-1360, filed, Juvenile and Domestic Relations Court of Passaic County
January 23, 1958	Notice of Appeal to the Superior Court of New Jersey, Appellate Division, filed
April 11, 1958	Reformatory Superintendent by letter to Juvenile and Domestic Relations Court requested determination of the offense for which defendant was adjudicated delinquent
May 2, 1958	Juvenile and Domestic Relations Court replied by letter determining the offenses for which defendant was adjudicated delinquent
August 21, 1967	Order granting leave to prosecute delayed appeal in forma pauperis, filed, Superior Court of New Jersey, Appellate Division

March 27, 1968	Opinion affirming adjudication of delinquency and commitment, filed, Superior Court of New Jersey, Appellate Division
May 3, 1968	Petition for Certification, filed, Supreme Court of New Jersey
May 28, 1968	Order denying petition for certification, filed, Supreme Court of New Jersey
August 19, 1968	Petition for certiorari filed, Supreme Court of the United States
May 19, 1969	Certiorari granted, Supreme Court of the United States

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Case No. J-1359

PETITION—Filed March 1, 1957

In the matter of William Monks, age 15, address 296 East 31st Street, Paterson, New Jersey, Color: white; religion: Protestant

Confined at Childrens Shelter as of February 16, 1957.

TO the Honorable HUGH C. SPERNOW, Judge of the Juvenile and Domestic Relations Court of Passaic County:

I, the undersigned petitioner, of Youth Guidance Bureau, in the municipality of Paterson, Passaic County, New Jersey, do hereby petition your Honorable Court, upon information, knowledge and belief, that WILLIAM MONKS, child under the age of eighteen years, residing with parents at 296 East 31st Street, Paterson, New Jersey, is a delinquent child, in that on November 12th, 1956, at approximately 8:30 P.M., in the middle of the roadway in front of 195 Wall Avenue, Paterson, New Jersey, while in the commission of an assault and robbery, he struck Giovanna Giambra, age 25, on the head, with a blunt instrument on repeated occasions, which resulted in her death on November 13th, 1956; and thereupon your petitioner prays that the said William Monks may be dealt with as law and justice may require in accordance with the provision of Title 2A:4-1 to Title 2A:4-41, Revised Statutes of New Jersey, and supplements thereof and amendments thereto.

Dated: March 1st, 1957

SERGEANT EDWARD J. KEYS
Petitioner

STATE OF NEW JERSEY)
) SS
COUNTY OF PASSAIC)

Sgt. Edward J. Keys, the above named petitioner being duly sworn on his oath deposes and says that the matters and things in the foregoing petition are true to the best of his knowledge, information and belief.

SERGEANT EDWARD J. KEYS
Petitioner

Sworn and subscribed to before
me at Paterson, New Jersey,
this 1st day of March, 1957

/s/ THOMAS F. HAND
Clerk

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Case No. J-1560

PETITION—Filed March 1, 1957

In the matter of William Monks, age 15, address 296 East 31st Street, Paterson, New Jersey, Color: white; religion: Protestant

Confined at Childrens Shelter as of February 16th, 1957

TO the Honorable HUGH C. SPERNOW, Judge of the Juvenile and Domestic Relations Court of Passaic County:

I, the undersigned petitioner, of Youth Guidance Bureau, in the municipality of Paterson, Passaic County, New Jersey, do hereby petition your Honorable Court, upon information, knowledge and belief, that William

Monks, child under the age of eighteen years, residing with parents at 296 East 31st Street, Paterson, New Jersey, is a delinquent child, in that on February 24th, 1956, at about 10:10 P.M., at East 31st Street between Broadway and 13th Avenue, Paterson, he did forcibly strike Naomi Weiss, age 42, on the head, with a blunt instrument causing a deep laceration which required fifteen sutures, and resulting in her hospitalization for a period of between six and seven weeks; and further that he did steal and carry away her pocket-book containing $30.00, an Elgin wrist-watch and various other articles; and thereupon your petiitoner prays that the said William Monks may be dealt with as law and justice may require in accordance with the provision of Title 2A:4-1 to Title 2A:4-41, Revised Statutes of New Jersey, and supplements thereof and amendments thereto.

Dated: March 1st, 1957

SERGEANT EDWARD J. KEYS
Petitioner

STATE OF NEW JERSEY)
) ss
COUNTY OF PASSAIC)

Sgt. Edward J. Keys, the above named petitioner being duly sworn on his oath deposes and says that the matters and things in the foregoing petition are true to the best of his knowledge, information and belief.

SERGEANT EDWARD J. KEYS
Petitioner

Sworn and subscribed to before
me at Paterson, New Jersey,
this 1st day of March, 1957

/s/ THOMAS F. HAND
Clerk

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Case No. J-1359
J-1360

THE STATE OF NEW JERSEY
IN THE INTEREST OF
WILLIAM MONKS

Children's Shelter,
Wayne Township, New Jersey

BEFORE: HON. HUGH C. SPERNOW, Judge

TRANSCRIPT OF HEARING—December 3, 1957

APPEARANCES:

CHARLES S. JOELSON, ESQ.,
Attorney for State of New Jersey,

JAMES P. EVERS, ESQ., and
J. MORTIMER RUBENSTEIN, ESQ.,
Attorneys for William Monks.

[fol. 2] THE COURT: Let the record show that present in the room are Chester Jarmolowicz, Probation Officer, Mr. Rubenstein, Mr. Evers, William Monks, his father and mother, William Pirolo, Confidential Aide, Court Officer George Marcus, Mrs. Mae Price, the Deputy Attorney General, Clerk of the Court Mr. Thomas F. Hand and the Judge.

Now, will counsel consider Rule 6:9-6? William was born October 30, 1941, which makes him 16 years of age.

MR. RUBENSTEIN: If your Honor please, I think the determining factor is the date upon which the alleged action for which he is being charged as a juvenile occurred, not the date of trial. The State versus Johnson case determined that. It is the date of the occurrence rather than the date when the boy actually comes to trial.

THE COURT: Any objection to that view, Mr. Joelson?

MR. JOELSON: No, sir. * * *

[fol. 3] THE COURT: All right. Since there is no disagreement about that, we will proceed. Mr. Jarmolowicz, please read the petition in this matter.

* * * *

[fol. 6] THE COURT: * * *

Now, what about these complaints which have been read, or the petitions? Representing the boy, what sort of a plea do you enter to these?

MR. EVERS: Well, technically the plea would not be not guilty because it is not a criminal proceeding, but the boy denies that he committed the offenses alleged in the two petitions.

* * * *

[fol. 74] LEO WEBERMAN, being first duly sworn, [fol. 75] testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JOELSON:

Q Mr. Weberman, what do you do for a living?

A I am an official Court Reporter of the State of New Jersey.

Q Now, on February 26, 1957, did you have occasion to take down a transcript of questioning of William Richard Monks by Detective Vincent DeSimone of the Prosecutor's office?

A I did.

Q And did you well and faithfully transcribe the questions and answers exactly as they were given?

A I did.

Q Now, I show you a transcript and ask you what this is.

A This is a transcript of the questions and answers of William Richard Monks.

Q Taken what time?

A 10:30 p.m., February 26, 1957. The statement was started at 10:45 p.m. and completed at 11:30 p.m.

Q And in whose presence was this statement taken?
A Deputy Attorney General Charles Joelson, Probation Officer Chester Jarmolowicz, Captain John O'Brien, Detective Sergeant Peter Ventimiglia, Detective Joseph Meola and County Detective Vincent DeSimone of the Prosecutor's office.

MR. JOELSON: I offer this statement in evidence.

[fol. 76] MR. RUBENSTEIN: If your Honor please, this is a statement in the nature of a confession, sir. He is called out of turn. He must have a preliminary examination. All he can do is mark it for identification.

MR. JOELSON: All right.

THE COURT: Is it signed?

BY MR. JOELSON:

Q Is this signed by the defendant?
A Yes, it is.

MR. JOELSON: I will offer it, then, for identification.

THE COURT: All right, S-5.

(Statement dated February 26, 1957, marked Exhibit S-5 for identification.)

Q I show you another statement and ask you what this is.
A This is a statement of William Monks taken on February 27, 1957, started at 12:00 a.m. and completed at 1:00 a.m.
Q In the presence of the same persons as involved in S-5?
A Yes.

MR. JOELSON: I will offer that for identification.

THE COURT: S-6.

(Statement dated February 27, 1957, marked Exhibit S-6 for identification.)

[fol. 77] Q That statement also, Mr. Weberman, is signed by William Richard Monks, right?
A That's right.

* * * *

THE COURT: Now it is marked for identification. On the question of the voluntary nature of it, do you have any further questions of Mr. Weberman?

MR. JOELSON: No, I don't.

THE COURT: On the question of the voluntariness of the statement you may now examine Mr. Weberman if he has any relevant testimony on that point.

* * * *

[fol. 78] CROSS EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. Weberman, where was that statement taken?
A At the Court House in Paterson.
Q What room in the Court House?
A The Court Reporters' room.
Q The Court—
A Court Reporters' office.

THE COURT: Counsel, there are two statements, S-5 and S-6.

Q S-5.
A Both statements.
Q Were both taken at the same time?
A Yes.
Q And they were taken one after the other?
A Yes.
Q In the same place?
A Yes.

MR. JOELSON: I might state for the record that S-5 relates only to the Weiss matter and S-6 only to the Giambra matter, but they were taken consecutively.

THE COURT: All right.

THE WITNESS: They are not the same day. It wove into the next day because it was taken late at night. I just noticed the dates.

[fol. 79] Q But it was consecutive. In other words, the difference in dates is because you ran over the 12:00 midnight hour, isn't it?
A Yes.
Q This was quite late at night?

A Yes.
Q What room is that?
A Room 25.
Q Where is that located?
A Right adjacent to Judge Davidson's Chambers.
Q And that is—
A Off the Probation Department.
Q Off the Probation Department?
A Yes.
Q Now, when you arrived at that room, who was there?
A Deputy Attorney General—

• • • •

A Deputy Attorney General Charles Joelson, Probation Officer Chester Jarmolowicz, Captain John O'Brien, Detective Sergeant Peter Ventimiglia, Detective Joseph Meola, County Detective Vincent DeSimone.
Q In other words, they were already in the room when you arrived there?
A Yes.
Q Did the questioning proceed immediately upon your arrival?
A That's right.
Q And did you transcribe the questions into short-[fol. 80] hand or did you type directly from the questions and answers?
A Directly to the typewriter.
Q Directly into the typewriter?
A Yes.
Q The question was asked—did you have them then wait until you could finish the question?
A Definitely.
Q The answer was given—
A Definitely.
Q And then if the answer was long, would you have him break it up or what?
A Definitely break it up.
Q There are two statements there. Did the statements continue—

A Well, I can tell by the time. The first one was completed at 11:30; the second one was started a half hour later.

Q In other words, it was a half hour in between the completion of the first statement and the starting of the second statement?

A That's right.

Q Were you in the room during that half hour?

A Oh, yes.

Q Or did you leave the room?

A I was right there.

Q So from the time you entered until the time these were completed, you never left the room?

A That's right.

Q Did the same group who were there, did they [fol. 81] continue to remain in the room?

A As far as I remember, yes.

Q All during the questioning?

A Yes.

Q Now, prior to the time any questions were asked of William Monks, were any statements made to William Monks by yourself?

A No.

Q By any other person who was in the room?

A I don't recall exactly whether statements were made or not. It is too long ago. I don't recall.

Q You didn't record any statements that might have been made?

A I only recorded what I was told to type.

Q You were only told to type the questions and the answers?

A That is correct.

Q You have no recollection of any other statements being made prior to the questions and answers which you recorded?

A I couldn't recall anything definitely, no.

Q So that what is marked S-5 and S-6 for identification only refer to questions and answers and not to anything else which may have been said from the time you entered the room until the time you completed the statement, S-6?

A That's right.

Q From the time S-5 was completed until the time S-6 for identification was commenced, what was going [fol. 82] on in the room, do you know?

A I couldn't recall now. We might have had a cup of coffee or—

Q You don't recall?

A I might have been getting the papers ready for the officers to sign, and things of that nature.

Q But you don't recall?

A I couldn't tell you exactly, no.

* * * *

PETER VENTIMIGLIA, being first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JOELSON:

Q Detective Ventimiglia, you are a member of the Paterson police force, is that right?

A Yes, sir.

Q And you are assigned as a Detective Sergeant in the Detective Bureau, right?

A Yes, sir.

Q Now, did you have occasion to question William Monks with regard first to the assault upon Miss Naomi Weiss?

[fol. 83] A Yes, I did.

Q When did you first question him and where?

A The first time I questioned William Monks was at the Shelter right here on February 18, I believe, on a Monday, February 18, in the presence of County Detective DeSimone and Probation Officer Jarmolowicz.

* * * *

Q Now, did you give the exact date upon which you first spoke to him?

A Monday, February 18, 1957.

Q Will you tell us the nature of that conversation?

A The conversation that afternoon—

Q By the way, who was with you except Mr. Monks, anybody else?

A County Detective DeSimone and Probation Officer Jarmolowicz.

Q Go ahead.

A We questioned William Monks at that time relative to purse snatching. We were exploring any other purse snatchings previous to the two that he had been picked up for and we dealt mainly with any previous purse snatchings and the general modus operandi as to where he may have obtained or what person may have [fol. 84] shown him this manner of purse snatching.

He denied any previous purse snatchings, and we then concentrated on the area which is known to us as the east side, which led to the asking of Bill Monks as to whether he ever snatched a bag from a woman near the hospital. At that point he stated, "I remember that night, it was snowing." Then he interjected that we were questioning him primarily because of the Giambra case and he said, "I was already questioned on that and I have an alibi and I was picked up by the police and I told the police that I had been in a luncheonette at the corner of 15th Avenue and East 22d Street," which, of course, Mr. Joelson and Judge Spernow, was very true, he had been questioned during the Giambra investigation.

We asked Bill Monks then and there if he would submit to a lie detector test and he said he would. That completed the interrogation at that time here at the Shelter.

Q Now, for what reason was Chester Jarmolowicz present? Is he a member of either the Paterson Police Department or the County Prosecutor's office?

A He is not but that was the arrangement and stipulation made by then Judge Schamach, that the only way we would get to talk to the boy would be with a Probation Officer present and that accounted for Mr. Jarmolowicz's presence.

Q And on all occasions when you spoke to William [fol. 85] Monks was Officer Jarmolowicz present?

A Yes, sir.

Q Now, when did you next talk to William Monks after February 18, 1957?

A On February 21, 1957. Arangements had been made to bring the boy to the anteroom of the Grand Jury in the Court House for the purposes of submitting him to a lie detector test.

Q Without going into the test at all, did you talk to Monks after the test was completed on that day?

A No, we did not.

Q All right. When did you next see Monks?

A I believe it was on Tuesday, February 26th of 1957, when William Monks was re-submitted to the lie detector test. At approximately 4:30 p.m. that day Monks confessed to the Weiss matter.

Q When you say he—

THE COURT: That is a conclusion. Let's find out what he said.

MR. JOELSON: I will consent to that being stricken.

Q Now, what was your conversation with Mr. Monks on that day and under what circumstances did the conversation take place?

A The conversation—interrogation took place after he had been submitted to a test on the machine.

Q About what time of the day was this conversation [fol. 86] that you are about to relate?

A About 4:30 p.m.

Q What was the conversation?

A Monks told us, that is, Detective DeSimone and Detective Meola and Probation Officer Jarmolowicz about the purse snatch that took place on East 31st Street back in February of 1956, February 24th, I believe it is, and on that evening with the snow falling—there had been a light snowfall—

Q Is this what he told you?

A Yes.

Q Go ahead.

A He was on East 31st Street, he took a position on the corner of East 31st Street and 13th Avenue by the nurses' home and he noted this woman walking towards Broadway on the west side of East 31st Street.

When she had reached a point alongside the hospital itself, he crossed diagonally and struck her over the head and when she fell to the sidewalk he took the hand bag and a package and then ran along the west side of East 31st Street towards Park Avenue.

At the corner of 15th Avenue and East 31st Street he entered a home, a furnished room home, via a rear door. Once in the house he went into the bathroom, examined the bag and removed the contents, cash contents. He then came out of the bathroom, out into the yard, he disposed of the package. He said that he had taken a package that she had been carrying, and at this point [fol. 87] he told us that he had also discarded the lead pipe that he had used—

Q Did he tell you what he hit her with?

A He said it was a lead pipe. He described it as being about two foot long and about an inch and a half in width. He also described the package, the size of the package as being, I think to indicate for the court, about the size of this envelope that Detective DeSimone has. He didn't know what was in it, he never examined the contents.

He told us that he discarded that into the garbage bin at the rear of this house on the corner of 15th and East 31st Street. At that time he also told us that he had discarded the lead pipe at the rear of this same yard.

Q Do you know as a matter of fact what did happen to that package?

A I do. He never got the package.

Q You are satisfied as to that?

A Yes, sir.

Q Continue, please.

A At this point I asked him to describe the way he had assaulted this woman and he told us that he had struck her over the head with his hand. At that point I interjected. I said to him, "Bill, if I were to tell you that this woman was bleeding from the head you could see that you couldn't possibly do that with your fist," and he was hesitant and then admitted that he had used the pipe on her and that he had struck her one blow.

[fol. 88] I then asked him to describe the bag and he says, "Well, you have the bag." At that point we went out—we were in the Grand Jury room proper—we went out, and we have five or six handbags there, and he identified this bag as being the bag that he took from the Weiss woman.

Q Now, I show you S-4 in evidence and ask you if this is the bag that was—

A That is the bag that he identified and that is the bag that was made available to us by Miss Weiss' sister as being an exact replica of the bag that was stolen that night. At that point, like I said, he indicated that we had the bag and he identified that specific bag as being the bag that he took from the Weiss woman.

As to the package, I asked him what else he did take from the Weiss woman other than her handbag and he said that he had taken this package that she was carrying. I asked him to identify the contents of the handbag and he told us that there was $30.00 in cash, there was a pen and pencil set, a ladies wrist watch, and at that point I asked him if he could remember a small box and he said he did remember the small box. I described it as a pill box because our report showed that there had been a small box of that type in the bag.

Q Other than calling his attention specifically to a pill box, did you or to your knowledge did anybody else [fol. 89] ever divulge to this boy what the contents of the purse consisted of?

A No, sir.

Q You were in charge of the investigation as to this suspicion against the Monks boy, were you not?

A Yes, sir.

Q Was the information as to the contents of the Weiss purse ever made available to the press?

A It was not, nor was the fact that she was carrying a package.

Q Now, you say this was approximately 4:30 in the afternoon on February 26, 1957.

A That is correct.

Q After this statement was made to you by Monks, what did you do?

A We then upon asking him what he had done with the bag and the contents of the bag and the package, he agreed to accompany us to that area and he was placed in a car, I think it was Detective DeSimone's car, and we drove to East 31st Street approaching East 31st Street from 14th Avenue and we made a left at East 31st Street out of 14th Avenue, and as we pulled to the curb at the corner of East 31st and 13th Avenue the car came to a stop and before the car came to a stop he said, "That is the tree I hid behind." He got out of the car and he demonstrated how he had hidden behind the tree at this specific corner, and he demonstrated the position he took behind the tree and how the woman came walking on the west side of East 31st Street [fol. 90] towards Broadway and also demonstrated when she got to a point not too far from the corner of Broadway he cut diagonally across, walked up behind her and hit her over the head with this pipe. He then led us from that point, indicating on the sidewalk just about where she fell, and then he said that he ran along East 31st Street and he took us into the rear entrance of the house that I have spoken about, into the bathroom, and before we entered the house he took us into the yard itself where there is a large hedge and indicated that he had thrown the pipe there and he showed us the garbage bin where he had thrown the package.

At that time he said that he had buried the package beneath the garbage itself. Then from there he took us to—

Q I show you S-1 in evidence and ask you to point out the house to which you refer.

A The house I am talking about is on the corner of 15th and East 31st Street, 465, as indicated here.

THE COURT: Will you have the Sergeant indicate the tree or the approximate location of the tree?

THE WITNESS: The tree—I would like to mark this—is the first tree along the curb here on East 31st just off the corner of 13th Avenue.

Q You have marked that with an X with a circle around it?

A Yes.

[fol. 91] THE COURT: Where is the nurses' home?

THE WITNESS: On that same corner, sir.

THE COURT: Which corner? Put an N there, a big N.

THE WITNESS: All right (witness complying).

THE COURT: Is that right, where he has that N? Is that where the nurses' home is?

MR. RUBENSTEIN: Yes, that is the nurses' home. Well, it was formerly the nurses' home. They don't use it as the nurses' home anymore.

BY MR. JOELSON:

Q Now, you say that he told you that he threw the pipe in the hedge at that time.

A Yes, at that time.

Q Now, what happened after that?

A Well I started to tell you that he took us to a place on East 26th Street and he indicated a plot of ground where he had buried the Weiss bag or the Weiss wrist watch and, of course, when he identified the bag we had in custody here we were sort of put on a little bit of a spot, so we went up there looking for the wrist watch because he said, "Well, you have the bag," and we dug there with the use of some shovels and then he called us back to the car and said, "No, it is not there," and with that we all returned to the car and he recanted on this Weiss matter.

Q On the entire matter?

[fol. 92] A On the entire matter.

Q He said that everything he had previously told you was—what did he tell you?

A He said that he had made it all up.

Q So then what did you do?

A He was then returned to the Court House and at the Court House back up on the third floor we met Robert Stopford, he was there with his mother, and Stopford was given a test on the machine and we confronted Stopford or Monks with Stopford at approximately 6:30 p.m. and in Monks' presence Stopford repeated that Monks had told him about the Weiss assault. There was no answer from Monks. He just lowered his head onto the table. Shortly thereafter—

THE COURT: Where was that?

THE WITNESS: That is in the Grand Jury room, sir.

THE COURT: All right.

THE WITNESS: In the Grand Jury room itself.

THE COURT: Who was present?

THE WITNESS: Detective DeSimone, Detective Meola, Mr. Jarmolowicz and myself. Subsequent to that Monks was put on the machine again and it was during—

Q By the machine, what do you mean?

A The lie detector, Polygraph, and subsequently Mr. Arther—

Q Who is Mr. Arther?

A I'm sorry, Richard Arther is the Examiner for [fol. 93] John Reid and Associates. He was the man who was giving the boys the tests. Mr. Arther came to the door, came outside and indicated that Monks—

MR. EVERS: I want to object to anything that Mr. Arther said unless it was in the presence of the defendant.

A (Continuing.) Well, as a result of Mr. Arther coming to the door County Detective DeSimone went into the anteroom where the test was being conducted and subsequently they both came out and the Monks boy came out with him and we went into the Grand Jury room—

Q How long after DeSimone went in the room with Monks did they emerge?

A Around 15 minutes, 10 or 15 minutes.

Q Was anybody else in there with him?

A There was Detective DeSimone, Mr. Arther and the Monks boy in the room itself where the tests were conducted.

Q Would you know whether Mr. Jarmolowicz was there?

A In the anteroom, no.

Q Then they came out, you say?

A Yes, they came out and we all sat then in the Grand Jury room itself, all the people that I have mentioned, County Detective DeSimone Detective Meola, Mr. Arther, Mr. Jarmolowicz, myself, and Monks made his confession.

MR. JOELSON: I will consent to the word "confession" being stricken.

[fol. 94] Q Did he then make a statement about either the Weiss case or the Giambra case or both?

A At that point it was the Giambra case.

Q What did he say in your presence?

A That on the evening of November 12—

THE COURT: What time was this?

THE WITNESS: Around 8:46.

THE COURT: Go ahead.

A (Continuing.) That on that evening he had been at the corner of 13th Avenue and Wall Avenue—that would be the southeast corner, I believe—well, anyway he was on the corner and he had this pipe in his sleeve, the sleeve of his jacket, and he noted this woman walking north on Wall Avenue on the east side of the street towards him. He stepped out and approached her, whereupon she turned and fled running diagonally across Wall Avenue and he after her. He says that he caught up with her in the middle of the road and he struck her with this pipe twice and that she fell to the roadway. He then grabbed her bag and ran south on Wall Avenue to the corner of 14th Avenue where he first was going to run down 14th Avenue towards 33d Street, but he noted a lot of people there so he decided to run east up Wall Avenue or up 14th Avenue into the Park. He then said that he ran through the Park and made his way down to the river bank just off the ball field at East [fol. 95] Side Park. Once down on the river bank he examined the contents of the bag. He said there was $3 in it. He then threw the bag and the weapon into the Passaic River.

Q Now, were you present when statements in the form of typewritten questions and answers were made before Leo Weberman?

A I was, sir.

Q Who asked those questions?

A County Detective DeSimone.

Q Now, the following day, that would be on February 27, 1957, did you again see William Monks?

A Yes, sir. On that morning, Wednesday morning, the 27th of February, 1957, we saw—I say "we," Detective Meola and myself—William Monks at the Court House. He had been brought from the Children's Shelter, and in the company of Detective DeSimone we went to the Passaic River just off the East Side ball park.

Now, with County Detective DeSimone, Sergeant Garrity of the Paterson police identification bureau and the Monks boy we then proceeded to East 31st Street, where the Monks boy then again reenacted the Weiss assault and photographs were taken by Sergeant Garrity, and once that was completed we then went to the corner of 13th Avenue and Wall Avenue where the Monks boy indicated where he had taken his position that evening and he reconstructed the assault on the Giambra girl.

[fol. 96] He then took us through the park, and I believe that he indicated then, he showed us exactly where —well, not exactly, that is the wrong word—he showed us the limb of a tree over which or by which he had tripped and went sprawling that night in making his way through the park to the river.

He then led us directly to the river bank just off of East Side Park and he demonstrated there how he had thrown both the bag and the pipe into the Passaic River. Photographs were taken by Sergeant Garrity during both re-enactments.

Q Now, I show you a photograph and ask you what this photograph represents.

A This photograph depicts William Monks leaning up against the tree, the tree that he pointed out to us as being the one that he hid behind on that night in February of '56 just before the assault on Miss Weiss.

Q And this was taken, you say, by Sergeant Garrity, a member of the Paterson Police Department?

A Yes, sir.

MR. JOELSON: I offer this in evidence.

* * * *

[fol. 97] MR. RUBENSTEIN: We would also object on the ground that there is no proof before this Court that this is in the nature of a confession. This is an action on this William Monks' part, there is no evidence

that it was voluntary, that he was notified of his constitutional rights against self-incrimination or providing any evidence which might be used at the time of trial against him.

[fol. 98] THE COURT: You may cross examine the witness as to that.

BY MR. RUBENSTEIN:

Q Mr. Ventimiglia, prior to the time this picture was taken, or may I first ask you, on what day was this picture taken?

A This was taken, I believe I said February 27. That is correct, Wednesday morning, February 27, 1957.

Q You had been there the previous day with him?

A I had been there, that's right, the previous afternoon.

Q Now, before this picture was taken, what was said to Mr. Monks at all concerning any of his constitutional privileges?

• • • •

A Nothing at this time. However, the statements had been taken the evening before and at that time County Detective DeSimone in the taking of both statements apprised William Monks that anything that he did say would have to be voluntary and the truth.

[fol. 99] Q Tell me as close as you can the exact words that Mr. DeSimone said.

A I would only be guessing, sir. The statement itself—

• • • •

Q Did you hear any advice given to William Monks concerning that he had a privilege not to disclose any statement?

A Well, not the exact words but in effect.

Q What were the words?

A I don't recall but I think in effect he was told that anything he did say would have to be voluntary and the truth and may be used against him.

Q And that was to anything he might say?

A That is correct.

Q Approximately what time was that said to him?
A At approximately 12:40 a.m.
Q A.M.?
A Yes.
[fol. 100] Q Prior to that had anything been said to him in your presence concerning any of his constitutional privileges?
A Well, prior to that we had previously taken the statement regarding the Weiss matter and he was then advised of the same thing that I just said.
Q Approximately what time was that?
A 10:30 p.m.
Q Now, you had been with the Monks boy how much prior to 10:30?
A How long, did you say?
Q Yes, prior to 10:30.
A Around 6—well, I had been with him from 4:30 on.
Q From 4:30 in the afternoon? You had been with him from 4:30 on? Were you in his presence at all times from 4:30 on?
A In his presence at all times excepting the time that he was put on the lie detector tests.
Q You were also not present during the time that Mr. DeSimone was in the room—
A With Mr. Arther.
Q And starting with 4:30 you first met him in what room?
A In the Grand Jury room itself.
Q How long did you continue in the Grand Jury room?
A We were there for maybe a half hour and then we took him in the car and we went up to the area around the hospital.
Q Now, from the time you got to the Grand Jury room to the time you went into the car, when you got [fol. 101] there was Monks already in the Grand Jury room?
A I was in the Grand Jury room when Monks was brought into the Grand Jury room.
Q Was Detective DeSimone with you in the Grand Jury room?

A Yes, sir.

Q Was anything said in the Grand Jury room concerning Mr. Monks' constitutional privileges at that time?

A No.

Q So that there was nothing said to him prior to that previous statement you had given to him?

A I don't understand. What previous statement?

Q You said when he came into the Grand Jury room he told you about the Weiss case.

A That is correct.

Q But there was nothing said to him concerning his statements before he started the statements?

A No, there wasn't.

Q Nothing at all?

A Except that—

Q I mean concerning his constitutional privileges.

A Oh, no.

Q Now, you went with him up to East 81st Street, as you have described.

A Yes.

Q Was anything said to him at that time concerning any of his constitutional privileges?

A No.

Q You returned to the Court House?

A Yes.

Q Where did you go with him?

[fol. 102] A I went into the Grand Jury room.

Q With him?

A I think so, yes.

Q Approximately what time did you get to the Grand Jury room?

A I would say sometime after 6:00 o'clock.

* * * *

Q Yes. Now, will you repeat what time you got back to the Court House again?

A Sometime after 6:00 p.m.

Q After 6:00 p.m.?

A Yes.

Q What room did you go to?

A To the Grand Jury room itself.

Q Was Monks with you?
A Yes, he was.
Q And how long did you stay in the Grand Jury room with Monks?
A Oh, maybe 15 or 20 minutes.
Q In that 15 or 20 minutes was anything said to Mr. [fol. 103] Monks concerning his constitutional privilege against self-incrimination?
A No.
Q After that 15 or 20 minutes, where did Mr. Monks go?
A I believe that he was put back on the Polygraph.
Q In other words, he went out of the room that you were in?
A Yes.
Q Who accompanied him out of the room?
A Mr. Arther, I think, took him in there.
Q You could not hear what went on?
A No, sir.
Q Approximately how long was he in this room with Mr. Arther?
A I would say about a half hour.
Q That would bring us to approximately what time?
A Let me check, please. I have to change that. I was wrong on that time. I believe it was after 7:00, about 7:30 when he was brought back into the anteroom for the test on the Polygraph.
Q Well, so that I understand this clearly, Mr. Ventimiglia, you came back from your trip to the East 31st Street area about when?
A Sometime after 6:00.
Q Sometime after 6:00. So from sometime after 6:00 until 7:30—sometime after 6:00 he remained at the room about 15 minutes, is that correct?
A No, I'm wrong. When we returned from the trip [fol. 104] we were all in the Grand Jury room and it was nigh onto 6:30, approximately. We made arrangements to get some food and somebody went out and got the food, and my notes show that the food that County Detective DeSimone and Detective Meola went for the sandwiches at 7:00. They returned about a half hour later.

Q All during that period was Monks with you?

A No. That is what I am trying to clear up. It was during that interval that Monks was brought back into the anteroom and given another test by Mr. Arther.

Q So from the time you returned from this trip to the East 31st Street area, which was a little after 6:00, between 6:00 and 6:30, until the time you went into the anteroom where Mr. Arther was, you were with him at all times?

A With the boy, yes.

Q And nothing was said to him during that period concerning his constitutional privileges?

A No.

Q Then he went to the anteroom with Mr. Arther, and approximately how long did he remain in there?

A Well, he was in there approximately—he was permitted to eat—I would say he was in there about a half hour.

Q A half hour?

A Yes.

Q Does that include the period in which Mr. DeSimone was in there with him?

A I am not too sure on that, whether the Detective [fol. 105] returned in that period or at the end of that half hour that I am speaking of.

Q But whatever it was, then Mr. DeSimone went into the room with Mr. Arther?

A Yes.

Q You did not accompany him?

A No.

Q You could hear nothing that was said?

A No, sir.

Q Approximately what time did you again see Monks?

A A little after 8:00.

Q A little after 8:00?

A Yes.

Q Where did you see him?

A He was brought into the Grand Jury room.

Q So from the time he went in with Mr. Arther until the time he was brought back to where you were, you did not see him?

A No.
Q He was with Mr. Arther?
A That is correct.
Q Mr. Jarmolowicz was not with him?
A No.
Q He was with you in the anteroom?
A No, not with me in the anteroom.
Q In the Grand Jury room?
A Yes.
Q He was with you in the Grand Jury room?
A Up until the time he was taken in for that test.
Q When he was taken in for that test, Mr. Jarmolowicz remained with you?
A He did, yes.
Q Now, when the boy came back this was a little after 8:00?
A Yes.
[fol. 106] Q You remained in that room for how long?
A In the anteroom?
Q Well, you were in the Grand Jury room. He was brought back into the—
A Which room are you trying to—
Q You told me before that he went someplace with Mr. Arther.
A They were in the anteroom.
Q Until approximately 8:00 o'clock?
A Yes.
Q And then he was brought back into the Grand Jury room where you were?
A Yes.
Q After that how long did he remain in the Grand Jury room?
A I would say up until shortly before 10:30, shortly before 10:30.
Q From that period, from 8:00 o'clock when he came back to the Grand Jury room until 10:30, was anything said to him about his constitutional privilege?
A No.
Q At 10:30 where was he taken?
A I believe we went to the Court Chambers of Judge Hinchliffe's Court, I believe. I am only guessing on that. I know it was in the Judge's Chambers.

Q Is that where this statement was taken?

A Yes.

Q Then for the first time you say something was [fol. 107] said about his constitutional privileges?

A Yes.

Q Now, from the time you first saw the boy at 4:30 until the time you said this statement was made, did you say anything to this boy in order to induce him to make a statement concerning the two matters under investigation?

A To induce? I don't know what you mean by "induce."

Q Did you say anything to him to try to convince him to make a statement?

A I simply said to him that the Weiss matter—of course, we were taking the Weiss matter first of all—that he had indicated to us—my answer is yes. May I go into—

Q What did you say to him?

A I am going to tell you. That he had indicated to us when we first spoke to him that it had been snowing on the night of February 24, 1956, and it was my belief that he knew a lot more about that specific assault on the Weiss woman. That is what I said to him.

Q Was this for the purpose of convincing him that he ought to tell you more?

A No. It was for the purpose of convincing him—not convincing him, but showing him that we were interrogating him along those lines in that he had indicated that it had been snowing that night and he was a suspect of purse snatching.

Q Did you tell him it would be better if he told the truth?

A I did not.

[fol. 108] Q Did you hear anybody say that?

A Nobody.

Q Did you tell him that if he didn't confess what he had done that the people would think he was a hardened criminal?

A No, sir.

Q Did you hear anyone say that?
A Nobody said that.
Q So there was nothing said as far as you said or heard on the times you were with him concerning why he should tell the truth?
A No.

MR. RUBENSTEIN: I have no further questions at this time of this witness, but in going to the question of the voluntariness, sir, I would like to have Mr. DeSimone called.

MR. JOELSON: We intend to produce him.

MR. RUBENSTEIN: I think before the question of the introduction of these things into evidence is completed, this is preliminary on the question of the voluntariness.

MR. JOELSON: Then I would like to have Mr. Jarmolowicz sworn also.

VINCENT DESIMONE, being first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JOELSON:

[fol. 109] Q Your name, please.
A Vincent DeSimone.
Q Mr. DeSimone, are you a County Detective of Passaic County?
A I am, sir.
Q And were you assigned to the investigations of the Naomi Weiss assault and the Giovanna Giambra assault?
A Yes, sir.
Q Now, I show you S-5 marked for identification and I ask you if this contains a true transcript of questions asked by you and answers given to you by William Richard Monks on February 26, 1957.

MR. RUBENSTEIN: I am going to object to that question. He was only called for the purpose of a preliminary examination as to the voluntariness of it, not as to the authenticity of it.

* * * *

MR. JOELSON: Well, if your Honor pleae, I am going to attempt to offer these statements in evidence.

THE COURT: But we interrupted the Detective to just have Mr. DeSimone come on and he was called, I understood, by Mr. Rubenstein.

[fol. 110] MR. JOELSON: I will let Mr. Rubenstein take over.

BY MR. RUBENSTEIN:

Q Now, Mr. DeSimone, I call your attention to the 26th of February, 1957. About what time of the day did you first see William Monks?

A I first saw him at approximately 10:00 o'clock in the morning.

Q Where did you see him?

A He was brought to the door outside the Prosecutor's office and I walked up to the Grand Jury room with him.

Q Did you remain with him?

A No. We turned him over to Mr. Arther who arrived a short time after and Mr. Arther proceed to test him.

Q As you walked up with him did you have any conversation with him at that time?

A None whatsoever.

Q And you left him up with Mr. Arther?

A That is correct.

Q And Mr. Arther was in the room by himself?

A Yes.

Q In which room?

A In the anteroom of the Grand Jury room. He had his equipment set up.

Q Who was with you when you took him from the Prosecutor's office up to Mr. Arther?

A Well, Detective Sergeant Ventilniglia and Detective [fol. 111] Meola who worked on this case with me were either with me or in the immediate viginity.

Q This is the morning?

A In the morning.

Q Was Mr. Jarmolowicz there in the morning?

A And Mr. Jarmolowicz was with us throughout the entire investigation. He was with us.

Q He was right with you when you took him up to Mr. Arther?

A If he wasn't with us he was there when we got upstairs. They were en route upstairs with him and I walked along.

Q You said nothing at that time to Mr. William Monks at all?

A Nothing.

Q When did you next see William Monks on that day?

A I judge that he was in there between one and a half to two and a half hours.

Q That would place it approximately around noontime?

A Around noon, in around noon or shortly thereafter.

Q And where were you during this period?

A We were either sitting out in the hallway or in the Grand Jury room. They kept that door secured.

Q When he came out were you there?

A Yes.

Q Did you remain with him?

A I believe the next thing we did was to obtain food for him because it was near lunch hour.

Q Did you remain with him while the food was obtained?

[fol. 112] A I believe we all ate together.

Q You didn't go out for the food at that time?

A I might have. I don't believe I did at lunch hour.

Q Did you say anything to him about the case at that time?

A Nothing whatsoever.

Q Did anyone have any discussion with him?

A No one said anything to him.

Q Where did you have lunch?

A In the Grand Jury room. Food was brought in and we had coffee and sandwiches right there.

Q After the lunch was finished, did you continue in the Grand Jury room?

A Well, then there was a delay and we allowed him to sit over in a corner and we conferred with Mr. Arther and as a result Harry Ogg was brought in at approximately 2:30.

THE COURT: What day is this?

MR. RUBENSTEIN: This is still the 26th, February 26th.

Q You say Harry Ogg was brought in. So from the time he finished his lunch until 2:30 when Harry Ogg was brought in, did you have any conversation with William Monks?

A None whatsoever.

Q Did anyone have any conversation with him?

A No.

Q Then Harry Ogg was brought in?

A Yes.

[fol. 113] Q Approximately how long was Ogg there?

A I should judge 20 minutes to a half hour. He was tested—

Q 20 minutes to a half hour he was in with Mr. Arther?

A That is correct.

Q All during this period did anyone talk to Mr. Monks?

A No one.

Q You were in the room with him, is that correct?

A Yes.

Q Then when Ogg came out, where were you and where was—

A We brought Willy Monks into the room after Ogg's test had been completed and confronted Monks with Ogg.

Q So you brought him into the room?

A That's right.

Q Up until this point you had said nothing to Monks concerning the case?

A No, sir.

Q Had you said anything to him about his constitutional privileges?

A No, sir.

Q Had you ever said anything prior to that date to Willy Monks concerning his constitutional privileges?

A Prior to that I hadn't said anything to him at all. I might have said, "Hello, Willy," but I hadn't said a word to him.

Q So the first time you had conversation with him [fol. 114] was on the 26th?

A That's right.

Q Then he went into the room with Ogg. How long was he in the room with Ogg?

A Just a few minutes. We confronted him and Ogg repeated what he had told us, and that was it.

Q And then what did you do with Monks?

A Then I believe Mr. Arther conducted another short test.

Q Of whom?

A Of William Monks.

Q Were you in the room when he did so?

A No. All the time when he conducted these tests he was alone, and perhaps there is something else I could make clear, after the first test that Mr. Arther conducted, which was on Thursday, February 21, he requested that no one interrogate William Monks until he had a chance to carry out further tests, and that request was abided by. No one spoke to him at all.

Q You had no conversation with him?

A No.

Q So now we are at the point in the afternoon where he is once again in with Mr. Arther.

A That's right.

Q You waited where?

A Either in the hallway or in the Grand Jury room.

Q In the approximate vicinity?

A Yes.

Q He was in there approximately how long?

A Not too long. I should judge a half hour or less. [fol. 115] Q When he came out did you have a conversation with him?

A Yes. When he came out, as a result of what Mr. Arther told us we began questioning him for the first time since before the previous—

Q Approximately what time was that?

A Well, it must have been around 3:30 or 4:00 o'clock, thereabouts, and at that time he described—

Q That is when you started to interrogate him, is that correct?

A Well, the interrogation, I say, didn't last no longer than a half hour to three-quarters of an hour, and at 4:00 o'clock, I believe it was, that is the first time that he told us any story about any assault on Miss Weiss.

Q You had discussion with him then, some discussion?

A Yes, we interrogated him.

Q Starting at 3:30 until when?

A Until 4:00 o'clock, I would say, approximately.

Q Until 4:00 o'clock?

A Yes.

Q And at 4:00 o'clock—

A Or shortly thereafter.

Q And at 4:00 o'clock you went where? Were you with him at all times?

A Yes.

Q Were you with him at all times between 3:30 and 4:30?

A Yes.

Q Were you in a position to hear what would be [fol. 116] said to him by anyone during that time?

A Definitely.

Q Then from 4:30 on where were you?

A Well, immediately after his relating the story of the Weiss assault we proceeded—

MR. RUBENSTEIN: I ask that that be stricken. It is a voluntary statement on this witness' part. I am asking him from 4:30 on what he did.

Q From 4:30 what did you do?

A We proceeded to the vicinity of the Barnert Memorial Hospital.

Q And how long were you away from the Court House?

A I should judge from a half hour to an hour.

Q So that would make it or bring it to approximately 5:30?

A Approximately.

Q All during that period were you with him?

A Yes, sir.

Q Were you in position—

A Except for a short time when I was digging and he was sitting in the car.

Q Other than that short period of time, you were always in a position to have heard anything which might have been said to him?

A Yes.

Q At 5:30 you returned to the Court House?

A Approximately 5:30.

Q You immediately returned to the Court House from wherever you were?

A Yes, sir.

[fol. 117] Q To where did you go in the Court House?

A Back up to the Grand Jury room.

Q Back up to the Grand Jury room?

A Yes.

Q How long did you remain in the Grand Jury room?

A I should judge—well, we remained there eventually until after 9:00.

Q Did he remain from 5:30 on? How long did he remain in the Grand Jury room?

A Until approximately 6:30.

Q Were you with him at all times from the time you went to the Grand Jury room until approximately 6:30?

A Yes, sir.

Q Were you in position to hear everything that could have been said to William Monks during that period?

A Yes. Well, I left for a short time to make arrangements to have Stopford brought in.

Q About how long were you gone?

A I would say five to ten minutes.

Q Other than five to ten minutes you were always there?

A That is correct.

Q At 6:30 what happened to Monks?

A At 6:30—

Q Approximately 6:30.

A At 6:30 Stopford was put on the test.

Q Where was Monks?

[fol. 118] A He was in the Grand Jury room and these tests were conducted in the anteroom, which is right beside the Grand Jury room.

Q You were with whom?

A We let Monks sit there and I believe I walked out and was talking to Mr. Arther making the necessary arrangements, then I might have been either in the hallway or in the room—

Q Was anybody talking to Monks during that period?

A There might have been—

Q There were others in the room with him?

A Well, there might have been but I don't believe there was any interrogation for that short period.

Q Who was in the room, if you know?

A Well, if anyone was there, Detective Sergeant Ventimiglia, Detective Meola and Probation Officer Jarmolowicz. We were there throughout the day.

Q And then what time did you go back—

A Well, approximately I should judge about 20 minutes later William Monks was confronted by Robert Stopford.

Q You were in the room?

A I was in the room.

Q You could hear what was going on?

A I was doing some of the talking.

Q How long did that go on that Stopford was there?

A Just a few minutes.

Q After Stopford left, did Monks continue to stay [fol. 119] in the Grand Jury room?

A Yes, he did.

Q Were you with him?

A I was.

Q For approximately how long did he remain in the Grand Jury room?

A I interrogated him for approximately a half hour.

Q And you could hear everything that was said to him during that period?

A I was speaking to him.

Q And at the end of that half hour, what happened to Monks?

A At the end of that half hour I ceased questioning him and told him I was going to get some food for him and asked him to sit over in the corner of the room.

Q And then you went out for food?

A Then I went out for food.
Q Approximately how long were you gone?
A Ten, fifteen minutes, maybe twenty minutes.
Q Where was Monks when you came back?
A They summoned me from the place where I went for the food—
Q You came back and where was Monks when you came back?
A In the anteroom of the Grand Jury.
Q In the anteroom of the Grand Jury?
A Yes.
Q With whom?
A With Mr. Arther.
[fol. 120] Q Then you were subsequently called into the anteroom?
A Yes, sir.
Q And who was in the anteroom when you went in?
A Mr. Arther and William Monks.
Q You could hear everything that was said at that time?
A Mr. Arther spoke to me.
Q You could hear anything that was said to Monks?
A Yes, sir.
Q About how long were you in there?
A Ten to fifteen minutes.
Q Then you went where?
A Then we went into the Grand Jury room and we ate our food.
Q You ate your food?
A Yes, William Monks, Mr. Jarmolowicz, Detective Sergeant—
Q Was there any conversation during this period with Monks concerning this matter?
A When we ate there was absolutely nothing said.
Q Had there been any conversation, you could have heard it?
A Definitely.
Q You were in position to have been able to hear it?
A Yes.
Q After you finished the lunch or the supper, what-

over it was approximately how long did you remain with Morphy then?

A I should judge fifteen, twenty minutes.

Ind. 121 Q Interrogating him during this period?

A He related certain things.

Q Were you interrogating him during this period?

A Yes, I was. Perhaps longer. I would say a half hour.

Q Of interrogation. After that half hour of interrogation, then what happened?

A Then we made preparations to have a stenographer brought in.

Q Approximately how long did it take for the stenographer to get there after this half hour?

A I would say close to a half hour or an hour.

Q During this period were you with Morphy?

A I was.

Q Did you hear everything that was said to him?

A Yes.

Q And then the stenographer came?

A Yes.

Q Now prior to that time had you at any time advised William Morphy concerning any constitutional privileges or rights he might have?

A I had.

Q When for the first time?

A Immediately after we had eaten and I interrogated him, he related certain facts to me. I then said to him, William we are going to ask you to give us a voluntary statement. You may do it or not but as you with everything you do must be of your own free will without any promise of reward or threat having been made and Ind. 121 to you and, as you know, it will be taken down in writing and anything you say may be used against you at a trial. Having given him such a statement he said, Yes, do it. Incidentally

Q Approximately what time would that be?

A Sometime after 8:00. Well it was around 8 as that we had finished eating and that the interrogation took place for perhaps fifteen to twenty minutes and then this conversation took place and then arrangements were made to bring in a stenographer.

Q See there.

A It was between 10 and 11 o'clock.

Q And that was the first time you had ever given him any thing about his constitutional rights?

A Yes.

Q Now, Mr. Whittington, starting at approximately 10:30 you were interrogating this boy, were you not?

A Yes, sir.

Q Did you have conversations with him concerning why he should tell the truth?

A No, sir.

Q Did you tell him that you could prove it whether he made a statement or not?

A No, sir.

Q Did you say to him that if he didn't confess the possible would thing he is a hardened criminal?

A Definitely not.

MR. EISENSTEIN: I have no further questions of this witness.

THE COURT: MR. BOLTON: Your Honor, I have no more questions of Detective Whittington, but again I want to try to get my statement into evidence. I would like to ask him a few questions in order to.

THE COURT: Suppose we get the other witness on and do it in an orderly fashion.

WILLIE VENTIMIGLIA, recalled the stand, testified further on his oath as follows:

MR. BOLTON: I believe when we left off, your Honor, there was an objection to this picture that was taken the following morning, February 27.

THE COURT: Yes.

MR. EISENSTEIN: I still object to it, sir, because there is no proof or circumstance on that to understand that this picture could be used. The only thing that has been testified to is that he was told that anything he might say might be used against him. There is absolutely no proof that he was advised of any privilege that he might have. After all that is a youth and an indication that he was told to do certain things.

THE COURT: What is the rule you can exhibit so far as an confession is concerned?

MR. JOHNSON: My understanding, your Honor, is [illegible] that all oral confession is in the nature of an exception to the hearsay evidence rule as, being an admission against interest and as such is admissible in evidence. It is as simple as that.

THE COURT: Well, that is an oral statement. Now, as far as an adult is concerned --

MR. JOHNSON: Yes.

THE COURT: That is as far as an oral statement and an adult. Now, is there any authority to the effect as far as a juvenile is concerned that a different rule should prevail?

MR. RUBENSTEIN: Well, the question of the adult, youngster or juvenile is the question of the mental capacity to realize what he is doing.

THE COURT: Yes. That is on the offense itself, but let's start off with the rule of law regarding oral admissions, confessions or what have you.

MR. RUBENSTEIN: May I make a suggestion to your Honor? I do not have the cases with me and this case will evidently go into tomorrow, so may we continue with marking all of these pictures for identification and then we can argue the first thing in the morning?

THE COURT: No. You can select your argument if you want to, but I am going to admit the statements if they are offered because I don't hear any legal reason [illegible] advanced why I shouldn't admit them.

MR. RUBENSTEIN: Because there is a privilege against self-incrimination that the man must be advised that he has a right against self-incrimination before it can be voluntary on his part.

THE COURT: What is the law? What do the cases hold in New Jersey on that point?

MR. RUBENSTEIN: I believe that is what the cases hold, but I am not in position. I haven't the cases with me and I am not in position to give you any citation at this time. That is why I made the suggestion, sir, for the convenience of the Court to mark all of these for identification and if by tomorrow either the Prosecutor can

mouth was, "Man, man, man, man." And then I said, "Look me in the eye, Will. Honest people look each other in the eye when they are telling the truth." And, incidentally, it was in a low tone of voice and Mr. Jarmolowicz was sitting no more than two feet away from me, from us. We were all in a huddle. I said, "Will, I believe you committed this crime. If you didn't do it, don't admit it, don't tell me you did, but if you did, Will, tell me the truth," and then I went into various things such as, "Willy, if you did do it you can feel everybody but you can't find God and you can't feel yourself," and I carried on, I went into various aspects of the case, the facts of what Stopford had told us, of what Ogg had told us, his general demeanor throughout and the early investigation up here in the shelter, and I truthfully told him that, "You yourself admitted without me asking you a thing." I mean, we didn't go into detail of that first interrogation because at that time this is included in that conversation. We were asking him about other purse snatches in the general area, so I started, we were trying to refresh his recollection as to other purses he might have taken and we started with 25th, 26th, 27th, 28th, 29th, 30th, and when I said 31st he says, "I didn't hit no 125th that woman." I said, "What woman?" He said, "The woman that was hit in the hospital." I continued to 32d. I said, "When did that happen?" He said, "About a year ago."

I continued to 33d, 33d, Wall Avenue. He said, "I didn't hit that girl." I said "What girl?" He says, "The Saunders girl." I said "When did that happen?" He says, "November, 12th," and then it carried on into other sort of fatherly talk, if he did do it, confess, if he didn't do it, "I don't want you to confess it."

Q. What exactly was said during this so-called fatherly talk?

A. Well, that general conversation.

Q. Was anything said about the fact that if he didn't admit it and it was proved what would happen to him?

A. No, definitely not.

Q. And that if he confessed if he admitted it what would happen?

A No, sir, none of the conversations of it.

Q Nothing was said about being considered a hard cruel criminal?

A Nothing whatsoever. There was one other little phrase I used, and I don't know exactly how I worded it, but it was in essence, "If you did it, confess it, you will feel better for it and everyone in general." I can't think of the exact words but I went over the entire interrogation when I am sitting talking to someone heart to heart I can do a better job than I can do here.

Q How long did this heart to heart talk take?

A I should judge twenty minutes to half hour or less.

Q And was it after this heart to heart talk that he told you this story?

A No. Then I told him, I said, "Willis, no one is going to speak to you at all, go over and sit in that corner and you search your conscience Willis. I am going to go out for food. What do you want to eat?" and I took down his order, what he wanted to eat, and I said, "Sit over there now and just search your conscience and think of what you want to do," and then I left.

Q When you came back

A I was summoned back, they came running for me. Detective Meeks came running across the street and said to me, he said, "Mr. Meeks wants to talk to you."

Q You spoke to him again?

A When I came back Mr. Arrigo asked me to come into the interview he said, Willis told me he wants to speak to you alone." He left and I sat down.

Q And you spoke to him alone at that time?

A Yes, I did.

Q Did you have any more of the Miranda discussion?

A We did all the talking then.

MR. BRUNO NARDIS: No further questions.

MR. ARRIGO: I renew the offer of the portion in evidence.

MR. BRUNO NARDIS: I object.

THE COURT: I will note your objection and let it be marked.

(Thereupon received and marked Exhibit 6.)

PETER VENTIMIGLIA, resumed the stand, testified further on his oath as follows:

DIRECT EXAMINATION

BY MR. JOELSON (Continued):

Q I show you another picture and ask you what this represents. By the way, was this picture also taken on the morning of the 27th by—

A Sergeant Garrity.

Q (Continuing:) —Sergeant Garrity?

A That is correct. This depicts William Monks pointing to a spot alongside the gutter. I believe it is 15th Avenue, I am not sure of the exact corner.

MR. RUBENSTEIN: I object to his reading the back of that, sir.

A (Continuing:) Well, I don't recall the exact corner but he is indicating here where he found the weapon which he used. Jarmolowicz is in the photo and so am I.

[fol. 131] MR. EVERS: Your Honor, we object for the same reasons that have already been stated in reference to the previous exhibit, S-7. We object to the admission into evidence of this on the same grounds.

THE COURT: All right. Your objection will be noted and it will be marked in evidence as S-8.

(Photograph, received and marked Exhibit S-8.)

Q Now, I show you another picture and I ask you when this was taken.

A This was also taken the morning of February 27. It depicts William Monks pointing to an excavation here. I think it is Park Avenue and East 31st Street where the new apartment house was going up where he threw the weapon. Probation Officer Jarmolowicz is also in the photo. That was taken on the 27th of February.

Q Where he threw the weapon?

A Where he had hidden the weapon. I'm sorry. After the West matter.

MR. JOELSON: I offer this.

MR. EVERS: Same objection on the same grounds.

THE COURT: All right. I will note the objection and let it be marked in evidence.

(Photograph received and marked Exhibit S-9.)

Q I show you another picture and ask you when that was taken.

A This depicts William Monks.

fol 132 Q When was it taken?

A The same morning, February 27, 1957.

Q Who is on this picture?

A In the photo Detective DeSimone, William Monks and myself. It depicts William Monks pointing to the spot alongside the Barnert Hospital where the assault on Miss Weiss took place.

MR. JOELSON: I offer this in evidence.

MR. EVERS: Could I say in connection with Detective Ventimiglia's statement regarding what it allegedly depicts, that when you say it depicts where the Weiss assault took place, you mean it depicts where he told you it took place?

THE WITNESS: That is correct.

MR. EVERS: Same objection for the same reasons.

THE COURT: Same ruling.

(Photograph received and marked Exhibit S-10.)

MR. RUBENSTEIN: May we say that the objection will be to this entire line of pictures so that we don't have to keep repeating it on the record?

THE COURT: All right. That object and I will rule.

Q I show you another picture. When was this picture taken?

A This was also taken the morning of February 27, 1957.

Q Who is on that picture?

fol 133 A In the photo Probation Officer Jarmolowicz, myself, County Detective DeSimone and William Monks. He is at the door of the furnished room house at the corner of 15th Avenue and East 31st Street. It

is indicating how he entered the door of this furnished room place after the Weiss assault.

MR. JOELSON: I offer this in evidence.

MR. EVERS: Same objection.

THE COURT: It will be marked.

(Photograph, received and marked Exhibit S-11.)

Q I show you another picture and ask you when this was taken and who is on the picture.

A This was also taken on the morning of February 27, 1957. In the photograph are William Monks and Probation Officer Jarmolowicz. It was taken in the bathroom of the furnished room house at the corner of 15th Avenue and East 31st Street.

MR. JOELSON: I offer it in evidence.

MR. EVERS: I object on the same grounds previously stated.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-12.)

Q I show you another picture and ask you when it was taken and who is on the picture.

A This is another picture taken on February 27, 1957. In the photograph William Monks and Probation Officer Jarmolowicz. Taken at the rear of the furnished room (fol. 134) house, 15th Avenue and East 31st Street. It shows William Monks pointing into the garbage bin at a garbage barrel where he disposed of the package that he took from Miss Weiss.

MR. JOELSON: I offer that in evidence.

MR. EVERS: Detective, I assume you mean he is pointing to the barrel where he said he disposed of the package?

THE WITNESS: That's right.

MR. EVERS: Same objection.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-13.)

Q I show you another picture and ask you when this was taken

A February 27, 1957. In the photo Probation Officer Jarmolowicz, myself and William Monks. It shows the corner of 13th Avenue and Wall Avenue.

Q What does it depict?

A It depicts William Monks looking south on Wall Avenue, indicating that was the position he took the night of the assault on Giovanna Giambra.

MR. JOELSON: I offer this in evidence.

MR. EVERS: Same objection, if your Honor please.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-14.)

Q I show you another photo. Was that also taken on February 27th?

[fol. 135] A The same day, February 27. In the photograph Probation Officer Jarmolowicz, myself and William Monks and he is pointing to a spot on the sidewalk on Wall Avenue at which point he accosted the Giambra girl.

Q What do you mean by "at which point he accosted the Giambra girl"?

A That is the point where he walked towards her and from that point, she fled.

MR. JOELSON: I offer this in evidence.

MR. EVERS: Detective, is this the spot at which he told you the girl had reached as she was walking on this street?

THE WITNESS: That's right.

MR. EVERS: Same objection.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-15.)

Q I show you a picture and ask you when this was taken.

A February 27, 1957. In this photograph Probation Officer Jarmolowicz, myself and William Monks. It depicts Monks pointing to a spot in the roadway where he struck Miss Giambra, where she fell in the roadway.

MR. JOELSON: I offer that in evidence.

MR. EVERS: Same objection.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-16.)

Q And lastly I show you a picture and ask you when that was taken.

(fol. 136) A This was taken on the morning of February 27, 1957. In the photograph County Detective Desimone, Probation Officer Jarmolowicz and William Monks. It was taken in East Side Park. Monks is indicating the branch over which he tripped and fell after fleeing from the assault on Miss Giambra.

MR. JOELSON: I offer that.

MR. EVERS: Is this looking down 14th Avenue?

THE WITNESS: I believe it is, yes.

MR. EVERS: Same objection.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-17.)

Q I show you one additional picture and ask you when it was taken and who is on it.

A This was also taken the morning of February 27, 1957. It was taken along the river bank of the Passaic River. In the photograph William Monks and myself, and Monks is pointing out toward the center of the river indicating where he threw the bag, the Giambra bag and the weapon used on Miss Giambra.

MR. JOELSON: I offer that.

MR. EVERS: Same objection.

THE COURT: Same ruling.

(Photograph, received and marked Exhibit S-18.)

MR. JOELSON: That is all, your Honor, of this witness.

CROSS EXAMINATION

BY MR. EVERS:

(fol. 137) Q Officer, when did you first meet William Monks?

A On Monday, February 18, 1957.

Q And that was here in the Shelter, isn't that correct?

A That is correct.

Q Now, do you have any knowledge as to how he had been in custody prior to that?

A Yes, I have.

Q Will you tell us?

A He was taken into custody during the early morning hours of February 16.

Q What day of the week was that?

A That would be early Saturday morning.

Q So, therefore it was on a Monday afternoon you saw him?

A That is correct.

Q Now, will you tell the court what you know about the circumstances under which he was taken into custody?

A On the early morning of the 16th he was taken into custody by Detectives Meola and Spazante. They were, of course, investigating two purse snatches that happened. Do you want me to go into all this?

Q Well, do your know whether they took him into custody in connection with either the Weiss or Giambi matters?

A No, no. He was taken into custody because of the purse snatches which took place on that Friday evening.

Q Friday evening the 15th, is that right?

A That is correct.

[fol. 138] Q Do you know where he was confined if he was confined on the 15th?

A No. I would be guessing, sir. I wasn't there; I know that he was brought to the Police Detective Bureau and I wouldn't be able to testify properly—I know he was brought to the police station.

Q Do you have any idea how long he was confined there?

A I wouldn't be able to tell you that, sir.

Q Do you know when he was first brought to the Shelter?

A I believe it was Saturday afternoon. I would only be guessing on that, too, but it was Saturday.

Q When you saw him on Monday, the 18th, what time of the day did you first meet him?

A 2:30 p.m.

Q And how long were you with him?

A Oh, approximately an hour.

Q What other detectives were with you?

A County Detective DeSimone and Mr. Jarmolowicz.

Q And in addition to interrogating him about these purse snatchings of the 15th, you also questioned him about the Weiss and Giambra matters, is that correct?

A No. We interrogated him as to the two purse snatches which took place that preceding Friday. As a result of the investigation conducted by someone else the two bags had been recovered, he had buried the bags. Our purpose in interrogating Monks at that time was [fol. 139] to ascertain if, No. 1, he had committed other purse snatches and possibly whether he was involved with anyone else who would use the same modus operandi.

Q Did you make any notes of your conversation with him on the 18th?

A I believe Mr. DeSimone did all the taking of notes.

Q So far as you recall, you didn't make any handwritten notes at all?

A I may have but I know that Mr. DeSimone did.

Q In any event, you don't have any in your possession now, is that correct?

A No.

Q So that the report that you have been referring to from time to time during your testimony was made up after these statements were taken, isn't that so?

A Yes. This report was made up—my part of this report was made up on February 27th in the afternoon.

Q And that report covers matters going all the way back to February 18th, isn't that right?

A It does, briefly.

Q And so far as you now recall, you didn't have any handwritten notes to refresh your recollection when you made up the report, is that correct?

A I can't say whether I did or I didn't. I more than likely did but I don't know where they are.

Q But if you had you didn't retain them?

[fol. 140] A Oh, if I took them I retained them.

Q Do you know where they are now?

A If I took them, I am not sure where they would be.

Q Well, the fact that you don't know whether they are, doesn't that suggest to you that maybe you didn't take them if it was your practice to retain notes?

A It is possible, yes.

Q It is probable, isn't it, that you didn't take any notes?

A Most always I take notes.

Q But you can't say that you took any in this case?

A No, I can't, because I haven't got them.

Q Now, do you know whether the boy was interrogated by anyone between the 18th and the 21st when you next saw him?

A Yes, he was.

Q Was he interrogated on the 19th?

A Oh, no, no. On the 19th of February?

Q Yes.

A No.

Q Was he interrogated on the 20th?

A No.

Q Did you understand my question wherein I asked you whether you knew whether he had been interrogated between the 18th and the 21st and you said yes? Did you understand that question?

A Did I say yes? I'm sorry. I might have misunderstood you.

Q So then so far as you know he was not interro- [fol. 141] gated between the 18th and the 21st, is that correct?

A As far as I know, that is correct.

Q On the 21st you met him again at the Court House in the anteroom of the Grand Jury room, is that correct?

A Yes, sir.

Q What day of the week was that?

A Thursday, I believe.

Q And what time of the day did you meet him?

A May I check?

Q Yes, indeed.

A It was sometime in the afternoon of February 21st, on a Thursday.

Q Was it as early as 1:00 o'clock?

A I have no notation as to the precise time but I have a notation as to when the boy was put on the machine in the first of three series. The first of three tests were started at 4:00 o'clock.

Q Can you tell the court for approximately how long you were in the presence of the boy on the 21st?

A Just long enought to be with the boy and Detective DeSimone and Mr. Jarmolowicz and Detective Meola and Mr. Arther—there was no conversation at all with the boy.

Q Were you at the court house when the boy arrived there?

A Yes, I think I was.

Q And were you there when he left?

A Yes. We took him back.

[fol. 142] Q And were you in his presence during the entire time he was there except for the lie detector test?

A Yes.

Q In other words, it is your recollection that during that entire period that he was in the court house on that afternoon that he was never out of your presence except when he was with Mr. Arther alone, is that right?

A That is correct.

Q Now, what was the total elapsed time, if you can recall, from when he arrived to when he left?

THE COURT: What day?

MR. EVERS: The 21st.

A The tests commenced at 4:00 and they were concluded at 5:30.

Q Was he made to wait any appreciable interval between his arrival at the court house and the commencement of the tests at 4:00 o'clock?

A No.

Q You didn't bring him down, did you?

A To the court house?

Q Yes.

A No. Mr. Jarmolowicz brought him to the court house.

Q And upon the completion of the tests at 5:30, did you bring him directly back to the Shelter?

A We stopped to see him.

Q What time did you get him back to the Shelter?

[fol. 143] A I would say that we got him back to the Shelter at the latest maybe 6:30.

Q I believe it was your testimony that on that day you didn't discuss either the Weiss or Giambra matters with him at all?

A Not on that day.

Q Nor Detective DeSimone?

A No, sir.

Q Nor Detective Meola?

A No, sir.

Q No one so far as you know?

A Not on that date.

Q Now, did you have any further dealings with him between the 21st and the 26th?

A None whatsoever.

Q Now, will you tell us again what time you first saw him on the 26th?

A Around 10:00 in the morning.

Q And that was at the court house?

A Yes, sir.

Q Had he arrived before you?

A We may have arrived together, I don't recall.

Q In any event, you didn't bring him down?

A No, sir.

Q Do you know who did?

A I wouldn't be able to say who did, no. I assume maybe that Mr. Jarmolowicz did, but I don't know that to be a fact.

Q Where was he on the 26th when you first saw him?

A In the Prosecutor's office or in that vicinity.

[fol. 144] Q Was he with anyone at that time?

A He was with Mr. Jarmolowicz.

Q Were there any police officers or detectives with him?

A No.

Q Now, were you with him continuously from 10:30 o'clock on the 26th until 1:00 a.m. on the 27th when this second statement was concluded?

A Excepting for the times he was on the machine, yes.

Q Were there any times during that interval when

you were out of his hearing—let me rephrase that and say when he was out of your hearing other than those times when he was with Mr. Arther?

A Yes.

Q Will you tell us what they were?

A Well, I can't tell you precisely just when they took place, but I would have to say that during the time that we were there I wasn't always within hearing distance of William Monks.

Q Well, were there any times when he was in a different room from you other than those intervals when he was with Mr. Archer?

A No, sir.

Q Were you present when Mr. DeSimone had this heart to heart talk with him that he has testified to?

A Yes.

Q Did you hear it?

A Not too well because it was kept at a monotone and I didn't hear it all.

[fol. 145] Q In what room did that take place?

A In the Grand Jury room.

Q Will you tell the court how large that Grand Jury room is?

A Oh, three to four times bigger than this room.

MR. EVERS: Can we let the record show the approvimate dimensions of this room?

THE COURT: Go ahead.

MR. EVERS: Can we say 15 by 20?

MR. JOELSON: We will stipulate that the Grand Jury room is a large sized court room.

MR. EVERS: All right.

Q And when Mr. DeSimone had this talk—

THE COURT: Wait a minute now. It is not a large sized court room.

MR. JOELSON: It isn't the size of a court room, but there is room there for 23 chairs and there is a bench—

THE COURT: It is about 20 by 30, isn't it, Mr. Joelson?

MR. JOELSON: I would say so, yes, sir.

MR. EVERS: Can we agree it is approximately 20 by 30?

MR. JOELSON: More or less.

* * * *

[fol. 146] MR. JOELSON: My only problem now, I have one witness from New York, the lie detector man, who would be very brief, and he is about to leave tomorrow for Yale University where he is going to deliver a lecture and he won't be available until Thursday, so we will either have to produce him today or Thursday.

* * * *

RICHARD ARTHER, being first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. JOELSON:

Q Mr. Arther, are you connected with John E. Reid [fol. 147] and Associates in New York City?

A Yes, sir.

Q And what is your title with that organization?

A Director of the New York office.

Q What is the business of that organization?

A Conducting Polygraph or lie detection examinations and interrogations.

Q And how long have you been doing this?

A I have been doing it since 1951.

MR. JOELSON: Are Mr. Arther's qualifications admitted? I am actually not producing him as a lie detector expert anyhow so—

THE COURT: What do you mean are his qualifications admitted?

MR. RUBENSTEIN: What do you mean?

Q Mr. Arther, did you give a lie detector test to William Monks on February 26th?

A Yes, sir.

Q I understand prior to that you had given him a test also on February 21, is that right?

A Yes, sir.

Q Now, on February 26 do you recall Detective DeSimone leaving for the purpose of getting sandwiches and supper?

A Yes.

Q And in his absence did you administer a test to William Monks?

A Yes, sir.

Q And during that test did you exhibit to him a [fol. 148] key?

A Yes, sir.

Q I show you a key and ask you—

MR. JOELSON: I will say for the record that I will tie this up and I will only mark it for the purposes of identification at the present time.

THE COURT: All right.

Q Is this a replica of the key that you exhibited to him?

A I would say it is very close if not the type of key I showed to him. I showed it to him approximately—I showed to him approximately five different ones.

MR. JOELSON: I would like to mark this just for identification.

THE COURT: All right.

(Key, marked Exhibit S-19 for identification.)

Q Upon your exhibiting this key to William Monks, did he say anything to you or did he do anything when you exhibited this particular key to him?

A He claimed that he hadn't seen it previous to being shown it at this time. Actually, if you want me to explain—

* * * *

Q And as a result of that did you say anything to him?

A Yes, sir.

Q What did you say?

[fol. 149] A I informed him that he knew this was the type of key that was in the pocketbook of Miss Giambra.

* * * *

Q And what did he do or say upon this—

A He didn't say anything.

* * * *

[fol. 150] Q After you showed him the key, what was the exact conversation between you and Monks, all of it?

A Well, I said that he knew that this was the type of key that was in Miss Giambra's purse and he did not say anything, and then I talked to him anywhere from about one minute to maybe two minutes and I used the words, "you did hit her, didn't you?" and he nodded his head affirmatively, and then I asked him some other questions and he didn't say anything, and I again used the question to the extent that I asked him if he did hit her and again he nodded his head affirmatively, and I asked him some other details, and at this time he spoke for the first time in probably five minutes and said he wanted to talk to Mr. DeSimone and tell him the story.

* * * *

[fol. 151] Q At that point did you call in Detective DeSimone?

A I went out to get him, but he was still out getting food and I believe it was another five minutes or so before he came back.

Q And at that point did you leave him and Detective DeSimone in the room together?

A Yes, sir.

MR. JOELSON: That's all.

CROSS EXAMINATION

BY MR. EVERS:

Q Mr. Arther, will you demonstrate for the court what you mean when you say that he nodded in the affirmative?

A Well, to the extent that anybody nods their head in the affirmative, to me that is an up and down motion.

Q What time of the day was this?

A I would have no idea except I would guess approximately 8:00 o'clock. That is merely a guess.

Q And to your knowledge he had been in the court house since approximately 10:00 a.m., had he not?

A Yes, sir.

Q And could not that nod to which you have referred

be a demonstration of weariness as well as an affirmative answer to your question?

A In my opinion, no.

Q I didn't ask your opinion. I asked, could it not have been an action on his part indicating weariness after [fol. 152] this ordeal?

* * * *

A Up until this point he had said nothing that would indicate he was physically tired and had not nodded his head previously in this manner at any time. This, I think, was the first time he had nodded his head up and down in that particular motion that day or the other day when I was talking with him.

Q Well, Mr. Arther, you had asked him the same questions previously, had you not?

A No, sir, not involving the key.

Q Well, hadn't you asked him whether or not he was involved in this case?

A Yes, sir.

Q And he had not nodded his head as you have suggested, had he?

A No, sir.

Q In other words, this was the first physical action, voluntary action on his part that might have indicated to you an assent to the proposition that he was involved, isn't that so?

A You are talking now about the Giambra case exclusively?

[fol. 153] Q Yes.

A Yes, sir.

Q You knew how old he was, didn't you?

A Yes, sir.

Q How old?

A 15.

Q He didn't utter any words on this occasion to which you have testified which would indicate an assent on his part that he was involved, did he?

* * * *

A He did not.

Q How many tests did you give altogether?

A Including both days?
Q Yes.
A You mean different periods or actually different tests?
Q Well, how many times did you use this machine on him altogether?
A I would say approximately nine or ten times.
Q You also subjected Mr. Ogg and Mr. Stopford to the test, too, didn't you?
A I gave them examinations, yes, sir.
Q How many for each of them?
A I would guess three on each of them.
Q But this boy got nine, is that correct?
A Yes, sir.
[fol. 154] Q At any time on either the 21st or the 26th did you make any statements to the boy regarding the reliability of your machine?
A Yes, sir.
Q You told him that it was infallible, didn't you?
A No, sir.
Q What did you tell him?
A I told him if he was telling the truth this would indicate that to me and if he was not telling the truth, it would indicate that to me also.
Q In other words, you told him that this thing would catch him in an untruth, didn't you?
A I didn't use those words but basically, yes, sir.
Q How many times did you tell him that?
A I imagine probably on two occasions.
Q On the 21st, the first time?
A And on the 26th.
Q And on the 26th. You testified, I think, earlier that this was a close replica of the key with which you confronted him, isn't that so?
A Yes, sir.
Q In other words, it is not a duplicate?
A I wouldn't know if it is or if it isn't. I did not mark it in any way.
Q Will you tell the court again what you said to him regarding the key?
A At which point? You mean after the test was over with?

[fol. 155] Q Well, this is while Detective DeSimone went out for sandwiches, you showed him the key, didn't you?

A I showed him several keys, yes, sir.

Q With relation to this key that has been marked for identification, what did you say to him?

A I said to him that he knew that this was the type of key that was in Miss Giambra's purse.

Q He had previously denied that, had he not?

A No, sir.

Q Well, now—

A Excuse me, yes, sir. Yes, sir, he had.

Q So you informed him that he knew it was the key, is that correct?

A Yes, sir.

Q You didn't give him a chance to say whether or not it was, did you?

A Well, I had given that chance to him previously.

Q Well, you made a categorical statement, did you not?

A After the test I did, yes, sir.

Q And his reaction to that was to remain silent and to nod his head, isn't that so?

A He remained silent at that point, yes, sir.

Q And then the next statement you made to him was also a categorical statement, was it not?

A Yes, sir.

Q In other words, it wasn't put in the form of a [fol. 156] question?

A Well, if I am asking you are you going to the movies tonight—

THE COURT: You said, Mr. Arther, to the boy, "You hit her, didn't you"?

THE WITNESS: Yes.

THE COURT: That is what you said to him?

WITNESS: Yes.

MR. EVERS: He didn't testify before—he said, "You hit her."

Q Didn't you?

THE COURT: He said, "You hit her."

THE WITNESS: Right, with the question mark on the end.

Q In other words, you intended a question mark at the end of it, isn't that correct?

A Well, it has to be because I am trying to get him to tell me—

Q But the words you used were, "You hit her"?

A If my memory serves me right, yes, sir.

Q So if you were not a perfect elocutionist possibly the question mark at the end of the sentence or statement might not have been apparent, isn't that so?

A Yes, sir.

Q You don't profess to be a perfect elocutionist, do you?

A No, sir.

• • • •

[fol. 157] THE COURT: Mr. Arther, your examination—when you use the Polygraph you refer to that as an examination?

THE WITNESS: Yes, sir, when I test the person.

THE COURT: The test had been finished?

THE WITNESS: Yes, sir.

THE COURT: Now, does the patient know that the test is finished?

THE WITNESS: Yes, sir.

THE COURT: He knows it is finished?

THE WITNESS: Yes, sir.

THE COURT: So that this conversation that you had with him was after this test?

THE WITNESS: Yes, sir.

THE COURT: How many of these tests had he been given on the 26th?

THE WITNESS: Well, I gave him—

THE COURT: You said there were nine.

THE WITNESS: That would be altogether, two days. I can quickly tell you—

THE COURT: Refer to your records, please.

THE WITNESS: Nine.

THE COURT: On the 26th?

THE WITNESS: Yes. I was mistaken. Yes.

[fol. 158] THE COURT: How long do they take? How long do they take, each one, or do they vary?

THE WITNESS: They vary. Some of them would—some of them were lasting one minute.

THE COURT: And some would be how long?

THE WITNESS: A maximum two and a half minutes.

THE COURT: Were you present with the detectives all the time that you weren't taking these tests?

THE WITNESS: No, sir.

• • • •

BY MR. EVERS:

Q How many tests were taken on the 21st?

A Three.

Q So that the total was twelve, then, is that correct?

A Yes, sir.

• • • •

THE WITNESS: I would like to check that just to make sure. Yes, twelve, sir.

BY MR. JOELSON:

Q I understand that each one of these examinations was on a different fragment or aspect of the Weiss or Giambra case?

A Yes, sir. Most of them were on different aspects.

• • • •

[fol. 159] Q Did you give the detectives any instructions after the 21st about whether or not to question this boy further?

A Yes, sir.

Q What were your instructions to them?

A Not to question him concerning the commission of these two crimes.

MR. EVERS: I ask that the word "crimes" be stricken.

THE COURT: Strike it out. You are going to renew your application with respect to the voluntary aspect of the confessions. Suppose we convene tomorrow at 10:00 o'clock.

• • • •

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Case No. J-1359
J-1360

THE STATE OF NEW JERSEY
IN THE INTEREST OF
WILLIAM MONKS

Children's Shelter,
Wayne Township, New Jersey

BEFORE: HON. HUGH C. SPERNOW, Judge

TRANSCRIPT OF HEARING—December 4, 1957

APPEARANCES:

CHARLES S. JOELSON, ESQ.,
Attorney for State of New Jersey,

JAMES P. EVERS, ESQ., and
J. MORTIMER RUBENSTEIN, ESQ.,
Attorneys for William Monks.

[fol. 161] THE COURT: Now, Mr. Evers and Mr. Rubenstein, you were going to state your position with respect to the statements which were allegedly given by William Monks.

MR. RUBENSTEIN: That is the oral statement—

THE COURT: Yes.

MR. RUBENSTEIN: Well, we asked your Honor's permission overnight to see if we could argue some points of law on it; our position now is that we rest upon what we said yesterday. That goes to the question of the pictures which went in and the oral statements testified to by Mr. Ventimiglia.

• • • •

[fol. 165] PETER VENTIMIGLIA, resumed the stand, testified further on his oath as follows:

• • • •

[fol. 166] CROSS EXAMINATION

BY MR. EVERS:

Q Sergeant, we had I believe gotten to the point of inquiring just how long you were with William Monks in the late afternoon of February 26.

A Yes.

Q Now, it is my recollection that you had been in his presence at the Court House from approximately 10:00 a.m. on that day until 1:00 a.m. the following day, isn't that so?

A Yes.

Q And that during all that time he was within hearing distance of you and you within hearing distance of him except for certain intervals when he was with Mr. Arther alone, is that correct?

A That is correct.

Q Now, how long a period of time did it take for you and Detective DeSimone to take the boy over to the east side area on the 26th?

A I would say an hour or a little better than an hour.

Q And previous to that time he had related to you certain matters about the Weiss case, isn't that so?

A That is correct.

Q And up to that point there had been no suggestion by him of a possible involvement in the Giambra case, isn't that also correct?

A That is also correct.

Q Now, when he first related to you anything about the Weiss matter, will you tell us where in relation to [fol. 167] the Barnert Hospital he fixed the scene of the alleged assault?

A In relation to the Barnert Hospital?

Q Yes, sir.

A Alongside the hospital on East 31st Street.

Q Now, Sergeant, didn't you testify on direct examination that he had put it right toward the front of the hospital building?

A No. I said that he had indicated a spot alongside the hospital building itself not too far from the corner of Broadway.

• • • •

[fol. 168] Q Tell us, Detective, what the boy told you about the Weiss matter on the 26th prior to your going to the scene.

A As to where the assault had taken place?

Q Yes, sir.

A Alongside the Barnert Hospital on East 31st Street.

Q Now, about how far back from Broadway is the Barnert Hospital set back?

A Fifteen or twenty feet.

Q And the building is fairly deep, is it not, along East 31st Street?

A Yes. There is a new addition.

Q And I believe you testified yesterday, did you not, that he had originally told you that the assault took place toward the front or toward the Broadway side of the hospital, isn't that so?

A Maybe it wasn't clarified. He indicated that the assault had taken place on East 31st Street not too far from the corner of Broadway.

Q Well, will you check your notes, Sergeant, and see if they throw any light upon what he originally told you on the 26th regarding the place on East 31st Street where the assault took place?

A On East 31st Street alongside the hospital.

Q But not too far from Broadway, isn't that so?

A That is correct.

[fol. 169] Q Now, let me refer you to S-10 in evidence. I show you this picture which I believe you testified is a representation of where he showed you the incident allegedly occurred on the 27th. Isn't that so?

A That is correct.

Q Now, that is quite a ways back from Broadway, isn't it?

A It is.

Q Then, is it correct to say, Sergeant, that there was a decided difference in the boy's story on the 26th and that on the 27th as to where the assault allegedly took place?

A No.

Q Well, did he show you on the 26th where it allegedly took place?

A He did.

Q Now, what else did he tell you on the 26th before you went over to this general vicinity about the Weiss case?

A That he had been hiding behind a tree on the southeast corner by the nurses' home and that he had watched this woman walk on the west side of East 31st Street towards Broadway, that he had cut across diagonally out behind her and struck her.

Q Now, did he also tell you what he had done with the weapon?

A At that time he told us that he had discarded the weapon at the rear of the furnished room house at 15th Avenue and East 31st Street.

Q In other words, he told you that before you went [fol. 170] to the scene, is that correct?

A That's right.

Q And you subsequently found that to be untrue, isn't that so?

A That is correct.

Q In other words, there was a variation in the versions that he related to you on the 26th and on the 27th, isn't that so?

A That was one of the variations, yes.

Q In other words, there were several variations on what allegedly took place with regard to the disposition of the weapon?

A No. The first story was that he had discarded it at the rear of that house and then the second version was that he had thrown it into the river. There were two stories.

Q Well, what did he tell you about the article—

A You are speaking about the weapon, is that correct?

Q Now I want to inquire—he also told you that something had been buried, had he not?

A Yes. He told us at that time that he had buried the handbag with the wrist watch still in tact.

Q This was on the 26th?

A Yes.

Q Before you went to the scene?

A Right.

Q And later in that day he recanted that, did he not?

A Yes, sir.

Q As a matter of fact, did he not later on the 26th after you had visited the scene repudiate the whole story [fol. 171] that he had told you?

A He did.

Q Prior to going to the scene on the 26th had he told you about having gone into the bathroom in the house on 15th and 31st?

A Yes, sir.

Q Did he say how long he stayed there?

A I don't recall.

Q Did he tell you what he did in the bathroom?

A Yes.

Q What did he say he did?

A He examined the contents of the handbag and he removed the $30.

Q And then he left the bathroom, is that correct?

A That is correct.

Q So that it was your impression that he had been there a matter of seconds or minutes, isn't that so?

A My impression, yes.

Q In other words, a very short time?

A Yes.

Q Where were you when the boy repudiated this story which he had originally told you in the Court House on the 26th?

A Sitting in the car with him.

Q And this was while you were out doing the digging?

A Yes.

Q Did you do any of the digging yourself?

A No.

[fol. 172] Q Detective DeSimone?

A Detective DeSimone and Detective Meola.

Q Was Detective DeSimone selected for that because of his physical attributes?

A He is better with a shovel than I am.

Q What time of the day or evening was it when this repudiation of the original story was made?

A It was in that 4:30 to 5:30 visit to the scene.

Q And you then returned to the Court House, is that correct?

A Yes, sir.

Q You and Detective DeSimone continued your interrogation of the boy after that?

A No. At that precise hour when we returned Robert Stopford was there or was brought there just immediately after we got back.

Q You weren't in on the interrogation of Stopford, were you?

A I was very briefly before he was put on the machine.

Q Did this take place in the presence of William Monks?

A Our conversation with Stopford? No.

Q Then there was a time during that day when William was out of your presence, wasn't there?

A He may have been in the Grand Jury room and we were just outside in the anteroom.

Q Didn't you testify earlier that during this entire [fol. 173] day from 10:00 o'clock until approximately 1:00 a.m. the following morning there were no times when the boy was not in your presence except those periods when he was with Mr. Arther?

A I did, yes.

Q That was incorrect, isn't that so?

A Well, I was in and out of the room. I may have gone for water and he may still have been sitting in the Grand Jury room.

Q So other people could have spoken to him at times when you were not available or in his presence, is that so?

A Oh, sure. What do you mean by "other people"?

Q Any other people.

A Only the people concerned.

Q Detective DeSimone, Detective Meola, but you are not prepared to say that no one else spoke to him at any time during that day, are you?

A Oh, yes, I am.

Q Could you see him at all times?

A Except for when I was momentarily out of the room to get a drink.

Q Well, you are not prepared to say that during those times no one else went into the room, are you?

A I can say no one else other than the people that have been mentioned were there were there.

Q You don't know that of your own knowledge, do you?

A I do.

[fol. 174] Q Could you see him while you were getting a drink? Could you see the room?

A It is just outside the door.

Q Were there any times that you went to the bathroom?

A No, I didn't.

Q How about the time when you were questioning Stopford?

A That was just outside the Grand Jury room.

Q And he was in another room?

A He was in the Grand Jury room.

Q Do you know who was with him at that time?

A Jarmolowicz, Detective Meola, Mr. DeSimone.

Q Now, this interrogation of the boy extended over a total period of nine days, did it not, prior to his indicating involvement in either of these offenses?

A I don't quite understand that question.

Q When did you first see the boy?

A I first saw the boy on a Monday, February 18, at the Shelter.

Q And at that time you questioned him about the Weiss and Giambra matters, did you not?

A I did not.

Q Wasn't there some reference to Weiss or Giamba brought up at that time?

A He made the references.

Q Were you in the court room when Detective De-

[fol. 175] Simone testified regarding statements that the boy made here in the Shelter on the 18th?

A My understanding—

Q Answer my question, please.

A I was, yes.

Q Did you hear Detective DeSimone say that he questioned the boy about incidents on 25th, 26th and 27th and various other streets?

A Yes.

Q And during the course of that questioning wasn't reference made to either Weiss or Giambra or both?

A By the boy, yes.

Q So that from that time on February 18—

THE COURT: Have you established, Mr. Evers, that that conversation was the 18th?

MR. RUBENSTEIN: He so testified.

MR. EVERS: He so testified.

MR. JOELSON: We will stipulate that was the 18th of February.

THE COURT: All right.

Q Now, is it correct, Detective Ventimiglia, that there was no indication by the boy until the 26th that he had been involved in either of these offenses?

A Yes.

Q So therefore he was under scrutiny—

A I'm sorry, my answer is no.

Q Did he at any time prior to February 26th admit to involvement in either the Weiss or Giambra matter? [fol. 176] A Not an admission, no.

Q The first admission on his part so far as you know took place on the 26th?

A The first admission, yes.

Q That was eight days after the 18th, was it not?

A You are correct.

Q And so far as you know during all that time he was held in custody, was he not?

A Yes, sir.

Q And he was subjected to interrogation on the 21st, was he not?

A He was subjected to tests on the Polygraph, no interrogation by us.

Q Do you know whether he was interrogated by any other person or persons?

A Well, I said that because Mr. Arther conducts the examination; he probably uses questions when he conducts his tests.

Q Did you at any time on the 18th or the 21st or the 26th of February make any effort to get either the mother or father of this boy to see him?

A No.

Q Did you ask the boy whether he would like to see his mother or his father?

A I did not, no.

Q Did anyone ask him those questions in your presence?

A I don't believe so.

Q Did you suggest to the boy on either the 18th or the 21st or the 26th that he might like to confer with a lawyer?

A No.

[fol. 177] Q Did anyone else make that suggestion to him in your presence on any of those days?

A No.

Q Did you advise him at any time on either the 18th, the 21st or the 26th about his constitutional privilege against self-incrimination?

A I did not.

Q And it is your understanding, is it not, that no reference was made to that until the formal questions were put to him and taken down by Mr. Weberman?

A That is correct.

Q And that was after he had made oral statements to you and Detective DeSimone regarding these two incidents?

A Yes, sir.

Q Did you know on these various days how old this boy was?

A I did.

Q I believe you were also aware of the fact that he had been in custody since late on the evening of the 15th or early in the morning of the 16th, is that so?

A That is correct.

Q Now, prior to his making these statements to you regarding the Weiss matter late in the afternoon of the 26th, there were various occasions when he denied involvement in either or both of these incidents, isn't that so?

A Yes.

Q Can you tell us how many times he denied involvement?

A I can't.

[fol. 178] Q Was it more or less than ten times?

A Well, the question, Mr. Evers, has a lot to do with the examination by Mr. Arther—

Q Why don't you just confine yourself to a direct answer to the question. Was it more or less than ten times?

A That I can't—

MR. JOELSON: Are you referring to how many times he denied it to Mr. Ventimiglia or in his presence?

MR. EVERS: Either. I am not referring to anything that took place with Mr. Arther because I assume the witness wasn't present.

THE WITNESS: That is correct.

Q But in your presence or to you was it more or less than ten?

A Three or four times.

Q Now, during this interrogation that took place on these various days the boy was accused of involvement, was he not?

A Yes.

Q Statements were made to him to the effect that, "You did it," isn't that so?

A Not quite that way, no.

Q Well, you tell us how they were made.

A As to the Weiss matter, the fact that he had in our first interview with him been able to tell us that it was snowing the night of February 24, 1956, indicated to us—

• • • •

[fol. 179] THE COURT: What was the conversation that you had with William Monks?

THE WITNESS: The conversation, not in its exact-

[fol. 180] ness—

THE COURT: The substance of it.

THE WITNESS: The substance of it was basically his knowledge of this—

THE COURT: Did we fix a time? Was this the 26th?
THE WITNESS: Yes, sir.
THE COURT: The 26th?
THE WITNESS: Yes. Of course, the first interview with him in the Shelter here—
THE COURT: Was on the 18th.
THE WITNESS: Yes. He had indicated then that it had been snowing that night and any interrogation or conversations later on were based on his statement that it was snowing on February 24, 1956, and that was the jumping point, jumping off point for any accusation by myself or Detective DeSimone.
THE COURT: What did you say to him? What was the conversation between you and William and Detective DeSimone on the 26th?
THE WITNESS: On the—
THE COURT: The Weiss case now.
THE WITNESS: You see, your Honor, the reason why I am hesitant is because I want the court to know that we were working with Mr. Arther. He would put the boy on the machine and certain things were done [fol. 181] such as the bag and certain reactions. I didn't want to go into all that, and then we would be guided by whatever his findings were on the machine.
THE COURT: You can still answer the question as to what you said to William and what William said to you and Detective DeSimone.
THE WITNESS: That's right. I asked him about that incident on East 31st Street and how he could remember that it was snowing that night.
THE COURT: What did he say?
THE WITNESS: And he said that he had read it in the paper or he could remember the incident.
THE COURT: What else?
THE WITNESS: And I also said to him that he had just been taken into custody for grabbing bags and that we were satisfied that there was some indication by his own statement that he knew something about this Weiss matter and that our investigation in talking to Stopford and Ogg indicated that he was responsible for the Weiss attack.

. . . .

BY MR. EVERS:

[fol. 182] Q When the boy told you something about the Weiss matter on the 26th, did you question him about the weapon?

A Only to a point after he had started to tell his story that he said he had struck her over the head with his fist, and then I interjected, I said, "Willy, this woman was taken to the hospital, she was bleeding from the head and you couldn't possibly do that with your fist." He hesitated and said then, "I hit her with a lead pipe."

Q Well, now, was there any time either on the 26th or the 27th or subsequent thereto when he told you or described to you, rather, a different type of instrument rather than a lead pipe?

A He did after that, yes.

Q In other words, there was a discrepancy in the stories that were related to you regarding the weapon, is that so?

A He first described it as a lead pipe, he gave the approximate size of it—

Q What was the approximate size that was given?

A In his first oral admission he said that it was two feet in length and about an inch and a half in diameter.

Q Do you have any idea of the weight of a lead pipe of that size?

A I most certainly do.

Q What would it be, about?

A I know it would be real heavy.

Q Would you believe the statement that he could [fol. 183] have wielded such a club or such a pipe?

A Would I believe it?

Q Yes.

A I would.

Q How heavy was this pipe in your judgment or how heavy would a two foot long one and a half inch diameter lead pipe have been?

A Quite heavy.

Q Well, tell us in pounds.

A I don't know, sir.

Q Did he subsequently describe some other kind of an instrument to you?

A He did.

Q Well, tell us what kind of instrument that was.

A Well, not exactly to me. He described it to Detective DeSimone on the night of the 26th.

Q But at least you are aware of the fact that an entirely different type of instrument was described, isn't that so?

A Well, to this effect: that he drew or there was a sketch drawn of the weapon.

Q And it was different from a two foot long one and a half inch diameter lead pipe?

A Well, it wasn't a lead pipe.

THE COURT: What was it?

MR. EVERS: I don't think he knows of his own knowledge.

THE WITNESS: I don't.

Q Were you in the room when the description was given?

[fol. 184] A Yes. He made a description—he drew a description.

Q Tell us what description was given.

A He described it as being two foot long and in the form of sort of an I-beam. He said there were holes all the way down the complete length of it.

Q Was it described as being lead or some other kind of metal?

A Well, in his first admission he said lead pipe.

Q We are talking about the second description now.

A I wouldn't know what the metal composition would be, sir.

Q Now, when the boy made this statement to you about the Weiss matter the first time, he stated that he had also taken some kind of a package, isn't that so?

A That is correct.

Q You were aware of what was actually taken from Miss Weiss, were you not?

A I was, yes.

Q And you were aware of the fact that no package had actually been taken from her other than her purse, isn't that so?

A I was, yes.

Q And is it not also a fact that prior to the statement by the boy on the 26th you were aware of the contents of her purse?

A Yes.

Q During the course of your interrogation of him on the 26th you made reference to the contents of the [fol. 185] purse, did you not?

A I asked him what the contents of the purse were.

Q Didn't you tell him what was in it?

A One of the articles I did.

Q Now, will you tell us again the different versions that were given to you or made in your presence of the alleged disposition of the weapon?

A He first told us that he had discarded the pipe at the rear of the furnished room house on the corner of 15th and East 31st Street. Later that evening he then told us that this weapon which he had used on both victims he had thrown into the river.

Q Didn't he also tell you that at some time or other he had buried it?

A He told us that he had buried the weapon after the Weiss assault, he had recovered it, used it on the Giambra girl and then threw it into the river.

Q Now, you had been in the Grand Jury room prior to the 26th, hadn't you?

A No. I think the first day that Mr. Arther gave the test the Grand Jury was sitting.

Q I don't mean in connection with this matter. I mean prior to your meeting the boy you were familiar with the general appearances of the Grand Jury room, were you not?

A Oh, I have been in it many times.

[fol. 186] Q Would you describe it for us, briefly?

A It is a medium sized room—I mean, as far as court rooms are concerned, it has several chairs, maybe 25, and it has a regular Judge's Bench, at least something like a Judge's Bench.

Q Well, would you say that it could properly be characterized as having the appearance of a court room?

A I would say it has somewhat the appearance of a court room.

Q As a matter of fact, it is used from time to time for trials, is it not?

A That is correct.

Q Now, when the boy was brought to the Court House on the 21st he was taken to the Grand Jury room?

A He was taken to the anteroom of the Grand Jury.

Q And on the 26th he was either in the anteroom or in the Grand Jury room back and forth during most of the period he was in the Court House, isn't that so?

A Yes, sir.

Q You were in the court room yesterday when Detective DeSimone testified to this so-called father and son conversation with Mr. Monks, were you not?

A Yes.

Q Where were you when that took place?

A I was in that room, the Grand Jury room itself.

Q And how far away from Detective DeSimone and the boy were you when this conversation went on?

[fol. 187] A I was up and about, I wasn't sitting—

Q Did you overhear any part of it?

A Oh, yes, parts of it.

Q Tell us what you heard.

A I think he spoke to him in a monotone, a low voice, and asked the boy to tell us the truth if he had committed these assaults, not to tell us anything or not to admit to them if he hadn't done them, and to search his conscience, and so forth.

Q Did you hear Detective DeSimone use the expression, "we can prove it anyway"?

A No.

Q You didn't overhear the whole conversation, though, did you?

A No, I did not.

Q Did you hear Detective DeSimone say, "The people will think you are a hardened criminal if you don't confess"?

A No.

Q Tell us what else you heard, sir, if anything.

A That is about all I can recollect.

Q During all the time that this boy was in detention or at least from the time you first came into contact with him on the 18th until these staements were made on the 26th or early in the morning of the 27th, was there any person in contact with the boy who might be characterized as a friend of the boy other than Probation Officer Jarmolowicz?

A Only Mr. Jarmolowicz.

Q That is of your own knowledge.

[fol. 188] A That is correct.

Q You and Detective DeSimone and Detective Meola conducted this investigation in the same way that you would have conducted any criminal investigation, did you not?

A Yes.

Q Did you leave any instructions to anyone here at the Shelter on the 18th regarding the boy's right to have visitors or to see anyone?

A No, sir.

Q Did you return him to the Shelter on the 21st?

A Yes, I did.

Q Did you leave any instructions with anyone at that time regarding his right to see people and talk to anyone?

A No, sir.

Q Did anyone in your presence leave any such instructions on either the 18th or the 21st?

A No, sir.

Q Did you know on the 18th when you first talked to this boy, did you know whether he had ever previously been questioned regarding the Giambra matter?

A Yes.

Q You knew he had, isn't that so?

A I found out, yes.

Q How about the Weiss matter?

A No, never.

Q In other words, you don't know whether he had ever been questioned—

[fol. 189] A I don't think so, Mr. Evers.

Q Well, you don't know, do you?

A I don't know, no.

MR. EVERS: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. JOELSON:

Q Detective Ventimiglia, when this boy Monks was first brought into custody, do you know whether or not he was living at home with his parents?

A He was not living at home.

Q Do you know how long prior to the time he was in custody he had any contact with his parents, if you know?

A I don't know. As to the length of time, I don't know.

Q Where was he living at the time of his being taken into custody, do you know?

A He was living on Ellison Street. If you will bear with me, I will give you the address. 421 Ellison Street in Paterson. He was living with a man and his wife, Mr. and Mrs. Charles Wramage.

Q Now, did you prior to the time the boy confessed involvement in the Weiss matter, did you confront him with either Ogg or Stopford?

A He was confronted with Ogg and later Stopford.

Q And in your presence and in his presence did both of them state that Monks had confessed the Weiss assault to them?

A Yes.

* * * *

[fol. 190] THE COURT: Supposing we just have the detective tell what happened with Ogg and then Stopford.

THE WITNESS: Well, Ogg was the first to be brought in and—

THE COURT: What happened?

THE WITNESS: Monks was confronted with Ogg and Ogg repeated in Monks' presence that the morning after the Weiss assault he, Monks, had told Harry Ogg about it. As for Stopford, he was also brought in and Monks was confronted with Stopford and Stopford repeated that he also knew of the Weiss incident and that Monks had told him about it.

THE COURT: When Ogg was before William Monks, exactly what did Ogg say?

THE WITNESS: You are asking me for the exact conversation?

THE COURT: I mean the substance of the conversation.

THE WITNESS: The essence of the conversation was the next day he, Monks, had told Ogg, if my memory is correct, and he even showed him some money, showed him some dollar bills.

Q And at that point what did Monks do or say?

A He didn't say anything, Mr. Joelson.

* * * *

[fol. 191] Q What happened as far as Stopford is concerned?

A He also repeated in Monks' presence what he, Monks, had told him about the Weiss incident and he didn't deny it, he just lowered his head onto the table.

Q Now, you testified before that the only time the Monks boy was out of your presence on the 26th was when he was with Mr. Arther.

A Right.

Q What about the time that Detective DeSimone was sent for the lunch and came over and talked to the boy, were you present then?

A No. He was in the anteroom with him where the machine was; I was in the Grand Jury room at that precise incident.

MR. JOELSON: I think that's all.

THE COURT: Detective, did you at any time tell Monks anything about the footprints from the hospital to that house on 15th Avenue?

THE WITNESS: I believe I did. Of course, that knowledge came as a result of talking to the two other boys. I may have mentioned the house to him, I am not sure. I am not sure on that.

MR. EVERS: May I inquire on that?

THE COURT: Yes.

[fol. 192] BY MR. EVERS:

Q You had access to the police report of February 24th or 25th, 1956, didn't you?

A I did.

Q Didn't that have reference to the footprints?

A No, sir.

Q I didn't understand whether you said you did or did not have access to the report.

THE COURT: He said he had access but the report doesn't have anything about the footprints in it.

Q Did you ever discuss it with the investigating officer?

A Yes, I did.

Q Now, you were aware that he testified here yesterday that there were footprints leading to that house, weren't you?

A I was aware of that, yes.

Q You were aware of that prior to talking to the boy, weren't you?

A I don't recall whether it was prior or after.

Q Now, the fact that the boy was living with Mr. and Mrs. Wramage, did that fact militate against your communicating with the boy's parents?

A No.

• • • •

[fol. 193] Q What time of the day did Ogg say William informed him about this Weiss matter?

A On the 26th?

Q No. Going back to the confrontation scene, am I correct in recalling your testimony that Ogg said on the morning after the incident William had told him about it?

A That is the way I recall it, yes.

Q Do your notes throw any light upon it?

A As to the time that he was confronted with Monks?

Q As to the time that Ogg said Monks told him about Monks' involvement in the Weiss matter.

A Well, I have nothing in my notes to clarify that except that my recollection is that Monks told Ogg the next day.

Q Well, didn't you a few minutes ago in response to a question from the Prosecutor say that Monks told Ogg the following morning?

A I said the next day or the next morning.

Q Well, did you say the next day or the next morning?

A I may have said the next morning.

Q You weren't present when Ogg testified yesterday, were you?

A I was not.

Q What time of the day was it or what time of the evening was it when William lowered his head on the table after being confronted with Stopford?

A 6:30.

[fol. 194] Q He hadn't had anything to eat, had he, since noon?

A He ate at noon and somebody was getting the food just about that time.

Q He hadn't had anything since noon?

A I don't think so.

* * * *

BY THE COURT:

Q Do you recall, Detective, on the 18th when you testified that it was the first time you saw the boy what time of the day it was that you first saw him?

A I believe I said 2:30 p.m., sir.

Q Then the second time you saw him was on the 21st of February?

A That is correct.

Q Then you saw him again on the 26th of February?

A Yes, sir.

Q Were there any other items on the 18th other than the snowing that you had mentioned before—was there another item or incident which you told us about?

A As far as I am concerned, that snowing was the impression that I was left with—

Q Was there anything about the Giambra case?

A It was mentioned but we didn't press it. I didn't; I know Mr. DeSimone didn't.

Q Did he make any oral statements to you on the [fol. 195] 21st, whether they were admissions or not?

A No. There was no interrogation by myself or Detective DeSimone on the 21st, or any detective.

Q Did you investigate, Detective, the original crime of Weiss or Giambra?

A I was on the Giambra matter but not on the Weiss matter.

• • • •

THE COURT: As a point of information, Mr. Joelson, in these statements are the contents of the bag; the Weiss bag, given?

MR. JOELSON: Yes, they are.

Q What was the one item, Detective, of Miss Weiss' bag which you mentioned to Monks?

A The pill box, what I call—that is what I call it, pill box.

Q Did you mention anything else?

A No, sir.

[fol. 196] Q Did you mention any of the contents of the Giambra bag to William?

A I didn't and nobody ever knew what the contents of that bag were.

Q Were you present when Detective DeSimone came back after he was called by Mr. Arther and William?

A Yes, I was.

Q And what did William say to Detective DeSimone then?

A I'm sorry, I wasn't present when Mr. DeSimone came back. As soon as he got back, he went into the anteroom with William Monks. I wasn't in there.

• • • •

BY MR. JOELSON:

Q Detective Ventimiglia, were you present in the Passaic County Court House on February 26, 1957, when [fol. 197] a stenographic statement was taken by Leo Weberman of questions asked by County Detective Vincent DeSimone of William Richard Monks?

A I was, sir.

Q I show you this statement, S-5 for identification. Have you had opportunity to look at this recently?

A I don't think I have seen this since it has been reduced to typewritten form. Yes, I did. I did, that's right, I'm sorry.

Q Were you one of the witnesses to this statement?

A I was.

Q And did William Monks sign this in your presence?

A He did.

Q And did he also initial the pages in your presence?

A He initialed every page "WM" and he has signed Page No. 10 "William Richard Monks." It also bears the signatures of Vincent DeSimone, Chester Jarmolowicz, myself, Captain O'Brien, Detective Meola and yourself, Mr. Joelson.

MR. JOELSON: I offer this statement in evidence, S-5 for identification.

MR. EVERS: May I inquire preliminarily about it?

THE COURT: Yes.

. . . . .

(fol. 1981) BY MR. JOELSON:

Q Now, Detective, were you also present when this statement which is marked S-6 for identification was signed by William Richard Monks?

A Yes, sir.

Q And did you witness the signing of that along with others?

A I did, sir.

Q And did you see Mr. Monks initial each and every page?

A I did, sir.

MR. JOELSON: I offer this in evidence.

. . . . .

MR. EVERS: Your Honor, in order to lay the foundation or attempt to lay the foundation for his attack upon the alleged confessions I would like with your permission to call Probation Officer Jarmolowicz to let him testify as to the circumstances under which the confessions and statements were made.

THE COURT: Well, you can, of course, do that and [fol. 199] you will be given an opportunity to do that—

MR. RUBENSTEIN: Just on the preliminary question of the voluntariness of these statements.

THE COURT: All right.

CHESTER J. JARMOLOWICZ, being first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. EVERS:

Q When on the 26th of February, 1957, did you first see William Monks?

A About 10:00 a.m.

Q Were you with him continuously until these statements were made?

A Yes, sir, with one exception.

Q What was that exception?

A That exception was when he was taken by the detectives to the garden plot, I believe it was, where he had hidden something.

Q Well, did you take the trip to the east side in the detective's car?

A When?

Q In the late afternoon.

A When they were to search the garden there?

Q No. I am referring to their whole trip to the east side area. Did you go along?

A No.

Q In other words, there was an interval of about an hour and a half when the boy was not with you?

A I don't think it was even an hour. Probably about [fol. 200] an hour.

Q Well, the fact is that the only times you saw the boy on this day were in the Court House, is that so?

A That's right, and the Shelby when I conversed him.

Q What time of the day or night were these statements which have been marked S-3 and S-4 for identification, what time were they made?

A Oh, I think they were taken about somewhere after 10:00.

Q 10:00 p.m.?

A 10:00 p.m., yes.

Q Would it refresh your recollection if you looked at them and saw what these statements say regarding the time they were taken?

A Yes. I said after 10:00.

Q Would you tell us what the statements say?

A This statement says 10:30 p.m., statement started 10:15 p.m., completed about 11:30.

Q That is S-5, isn't it?

A Yes.

Q Will you look at S-6 and see if there is any indication on that as to when it was taken.

A It says it was taken at 12:00 a.m. and completed 1:00 a.m., on February 27th. It was continuous.

Q Were you in the room when Detective DeSimone had his conversation with the boy, the conversation that has been referred to as this father and son or heart to heart talk?

A Yes, I was.

Q In which room did that take place?

[fol. 201] A That took place in the court room itself.

Q In the Grand Jury room?

A Grand Jury room, rather.

Q And where were you in that room when this conversation took place?

A I would say about from here to the wall, which would be about I would say 12 feet or a little closer.

Q Did you overhear the conversation?

A Parts of it.

Q Tell us what you heard, please.

A Well, I heard Mr. DeSimone appealing to the boy to search his conscience and to relieve himself of the truth, that he would feel better and that he would certainly be a credit to himself. That is the essence of it.

Q Did you hear any statement to the effect that it would be easier for the boy to tell that he had done these things?

A No. He wasn't given any information such as that.

Q At least none that you heard?
A None that I heard, no.
Q And there were parts of the conversation which you didn't hear, isn't that so?
A That's right.
Q Were you in the presence of the interrogating officers at all times during this day other than the period to which you have referred when they took the trip to the [fol. 202] east side area?
A I was present in the room unless he was in the anteroom with the tests.
Q You mean with Mr. Arther?
A Yes, Mr. Arther, that's right.
Q Do you know whether you heard everything that went on between the officers and the boy prior to this conversation with Detective DeSimone?
A Not all because I was instructed very carefully by the court, by the Judge, to be there only to see that the boy was not browbeaten or exhausted in any way which would be unfair to him.

If I may say something at this point, your Honor, you see, I took no notes of what transpired because I was told—we usually proceed with the information supplied to us by the detective bureau or the Children's Bureau in the average juvenile case. You see, I would then proceed with the information that I got from them. However, I did hear certain things and what connection the things were in the sequence, as far as I can recall, if that will be any aid to the court.

Q Well, did you hear Detective Ventimiglia refer to the pill box in the Weiss bag?
A I believe so.
Q And during the course of that day did you hear either Detective Ventimiglia or any other detective enumerate the other items that were in the bag?
[fol. 203] A I can't say. I don't recall.
Q Well, was there any time during that day when you did hear an enumeration of those items?
A No. Only from the detective telling me but not in the presence of Monks.

Q In other words, it is your understanding that the detectives were aware of the contents of the bag, isn't that so?

A To some degree, yes.

Q This is prior to the boy making any statements indicating an involvement on his part?

A That's right.

Q Did you pick the boy up here at 10:00 o'clock on that morning or before 10:00 o'clock?

A Yes.

Q What time did you arrive for him?

A Shortly after I go to work, it must have been about 9:00, 9:30.

Q Do you know whether he had had his breakfast that day?

A I don't, no. You are talking about the 26th?

Q Yes.

A No.

Q You don't know?

A No, I don't know. I assumed that he had.

Q Do you know what else he had or do you know whether he had anything to eat at any time during that day from the time you picked him up until these state- (fol. 204) ments were made?

A I think we ate about noon and I think we ate around -- well, it started somewhere around 6:00, 6:30, 7:00 o'clock before he actually ate. I think he had a sandwich at 9:00 o'clock or 9:30.

Q Did he have anything during the course of that day other than a sandwich or sandwiches?

A Meat sandwich, milk, I believe, pie.

Q He didn't have any hot meal, did he?

A No. I think he was offered coffee. I think he took milk.

Q I mean, was he offered a so-called meat and potato type of meal?

A No.

Q He was offered a sandwich, isn't that so?

A Yes, or several, whatever he wanted.

Q In the sandwich line?

A I don't think it was limited to that. They asked him what he wanted to eat and they were all having sandwiches so he asked for one.

Q Well, did anybody say, "We are going to send out for sandwiches; what will you have"?

A That I heard. I think it was Mr. DeSimone that said that.

Q So is it correct to say that he was asked if he wanted a sandwich?

A Probably, yes.

Q That occurred twice to your recollection?

A Yes.

[fol. 205] Q Were there any intervals in that day when the boy was left alone by himself?

A Yes. That was later in the afternoon. I believe after he had made an admission he was left alone.

MR. EVERS: I ask that that be stricken, "admission" be stricken, your Honor.

THE WITNESS: I wanted to avoid using that myself. Somewhere late in the afternoon he was given a rest. I would say it lasted for about 40 minutes.

Q Late in the afternoon?

A Yes, fairly late.

Q And with that exception he was constantly in the presence of some person or persons, isn't that so?

A Always.

Q And would it be correct to say that he was constantly interrogated regarding these matters?

A No.

Q Well, were there any times when there was no discussion about these cases?

A No. What would happen is the officers would go off at a distance and give themselves a series of questions to ask him and before they came back maybe 5, 10, 15 minutes would pass, perhaps more.

Q But the boy would be aware, would he not, of the fact that they were just preparing for the questions?

[fol. 206] A Well, I assume so. He had nowhere to go.

Q Could you properly say, therefore, that this was a continuing process of interrogation from approximately 10:00 o'clock in the morning until the statements were made?

A Well, I wouldn't say it was a continuing direct questioning. I would say it would be an episode of questioning with intervals of rest for the boy because the officers concerned wanted to compare notes with themselves and probably cover points that the other wasn't thinking of.

Q Well, referring to these intervals when the officers would compare notes, how many of them were there?

A Well, I think almost always Officer Ventimiglia and Vincent DeSimone were there.

Q When they conferred or in preparation for these little conferences did they indicate to the boy that they were going to leave him alone?

A No. They would just simply cease questioning him and the boy sat in the chair and I believe the officer sat at a table facing him there. It was a long table about this size (indicating).

Q And the boy would be told either expressly or impliedly to remain where he was, is that right?

A He was never told. He just remained there.

Q But would the officers withdraw from the room?

A Only to go to the bathroom.

Q Or did they go over to the corner of the room to [fol. 207] confer?

A Yes.

Q Whispered conversations?

A Yes.

Q These took place in the presence of the boy?

A Yes. I took advantage of one of those episodes to ask the boy that if he really knew anything about these offenses that he should unburden himself and search his conscience and that he would feel much better if he told it, because he would have it to live with the rest of his life, the sort of counseling I would give any boy in any juvenile court.

Q These episodes wherein these conferences between the police officers took place lasted for approximately five minutes or ten minutes, is that correct?

A I think the longest was about ten to fifteen minutes.

Q You wouldn't—

A And even there there were interruptions where we just sat there.

Q Was it your understanding that while these things were going on that they were just preliminary to further interrogation?

A Oh, yes. I knew what the purpose of these interrogations were.

Q So you wouldn't properly characterize these intervals as rest periods, then, would you?

A Well, he was resting insofar as the fact that he wasn't answering questions, which was to a degree a rest for him.

Q Well, they were really interruptions in the inter- [fol. 208] rogation, weren't they?

A That's it.

Q Very brief interruptions?

A Yes.

Q So the only sustained period when the boy was not interrogated is this period of roughly 40 minutes to which you have previously testified?

A Yes.

Q Was he left alone in the room then?

A No.

Q Who was with him during that period?

A I don't understand you.

Q This 40 minute period of rest in the late afternoon to which you referred.

A Mr. DeSimone, I believe, and Mr. Ventimiglia, I believe, were there.

Q They stayed in the room during the 40 minute period?

A They may have walked through the hall. You see, the room does not actually—the door we were using does not actually open into the hall, it opens into a long narrow smaller hall in which the anteroom is adjacent. I myself walked in there but under no circumstances would I consider that leaving him alone because I could have heard any talk going on.

Q During this 40 minute period do you know whether the boy slept?

A No. I thought he was quite relaxed and alert. That was the one thing I was looking for. If I thought he was being exhausted I would have demanded that it stop.

[fol. 209] Q Well, this was late in the afternoon, wasn't it?

A Yes.

Q And the process of interrogation continued for several hours after that, didn't it?

A No. At that time I believe food was talked about.

Q Well, the fact is that you didn't leave the Court House until after 1:00 a.m. on the 27th, isn't that so?

A Yes.

Q Now—

A I haven't answered your question.

Q You answered yes.

A I didn't mean yes if you mean that he was interrogated after that rest period.

Q My question was this: you didn't leave the Court House until after 1:00 a.m. on the 27th; isn't that so?

A Oh, that part—

Q Your answer is yes?

A Yes. I was talking to the question before that.

Q Now, was the boy questioned by more than one detective at any time on this day?

A Only these two, Ventimiglia and DeSimone.

Q But would they both participate in the question?

A I think there were only two instances where they alternated questions. After that I would say that 90 per cent of the questioning was done by Mr. DeSimone.

[fol. 210] Q In the presence of Detective Ventimiglia?

A Yes.

Q Is that right?

A Yes.

Q But there were at least these two periods during which they alternated questions, is that correct?

A I think it happened only once.

Q How about Detective Meola, did he participate in the questioning?

A No. He was in the room several times—

Q There were times when the boy was in the presence of the three detectives, then, and yourself, isn't that so?

A Yes.

Q And there were times when he was questioned in the presence of the three detectives?

A That's true.

Q By either Detective DeSimone or Detective Ventimiglia or both?

A That's right.

Q Now, you heard the boy deny complicity in either or both of these offenses, did you not?

A Yes.

Q And you heard him repeat those denials on many occasions, did you not, on the 26th?

A Well, he admitted it and he denied it, then he readmitted it.

Q Well, you were present in the court room yesterday when Detective Ventimiglia testified, were you not?

[fol. 211] A Yes.

Q And do you recall his saying that it was about 4:00 or 4:30 in the afternoon when the boy admitted involvement in the Weiss matter?

A I believe so, yes.

Q And prior to 4:00 or 4:30 the boy had been interrogated on and off for either six or six and a half hours, had he not?

A With intervals of eating and testing, yes.

Q And during that period of six or six and a half hours, were there not occasions when he denied that he had done these things?

A Yes.

Q Weren't questions put to him—

A Yes.

Q (Continuing.) —and he denied complicity?

A If I recall, yes, he was denying it.

Q And there were many denials, were there not?

A Well, I would say no more than four or five, three to five, because the questions were not constantly asking for admission. They were leading questions up to a certain point and then a question would be asked him and he would deny it.

Q But you are sure that at no time prior to 4:00 or 4:30, you are sure that no time prior to that he admitted involvement in either of these offenses?

A Well, I will have to consult my notes. As far as I can make out, it was approximately late in the after- [fol. 212] noon when the boy admitted to the Weiss offense after being confronted by Ogg.

Q There were no admissions prior to that time?

A No, none.

Q Did the boy cry at any time that day?

A No.

Q Did you hear the testimony earlier about his having lowered his head on the table?

A Yes.

Q Did you see him lower his head?

A I saw him lower his head, yes. He was not crying.

Q Well, could you observe his eyes when he had his head down?

A No.

Q He had his head buried in his hands?

A No. He was too close to the table—

Q You don't know whether he was crying or not, do you?

A Except when he raised his head, I saw no evidence of it.

Q You saw no tears. How long was his head down?

A Just a few seconds.

Q Did you see any sobs or hear any?

A No.

* * * *

[fol. 213] CROSS EXAMINATION

BY MR. JOELSON:

Q You witnessed this confession, did you not?

A That's right.

Q And you were there while the boy was being questioned and Mr. Weberman was transcribing his answers?

A That is true.

* * * *

THE COURT: You were referring in your last questions to Mr. Jarmolowicz to which exhibits?

MR. JOELSON: S-5.

THE COURT: Will you ask him about S-6?

BY MR. JOELSON:

Q Now, were you present when S-6 was signed by Monks?

A Yes.

Q And did you witness it?

A I witnessed it.

Q Were you present while the questions and answers were going on and while Mr. Weberman was transcribing these questions and answers?

A That's true.

[fol. 214] Q Do you remember, Mr. Jarmolowicz, that County Detective DeSimone asked Monks if he was willing to give a voluntary statement without any threats or promise of reward knowing that it would be used against him in a trial?

A Yes.

Q And do you recall what Mr. Monks' answer was to that?

A He said he would give the correct answers, he would answer, and he understood his rights.

Q Now, were you also present when he was asked if he was threatened or abused in any way?

A Yes, sir.

Q And what was his answer to that?

A He said no, but abused.

Q All this goes to S-5.

Were you also present when he was asked whether [fol. 215] any promise of reward had been made to him?

A Yes.

Q And what was his answer to that?

A He said no.

Q Now, was he also asked in this statement as to what and how often he had eaten that day?

A Yes.

Q Now do you recall exactly what his answers
A I think he said three times, if I am not mis
Q And did he say whether or not he had brea
A I don't recall unless I look it up
Q I will show you rule 5(6) for identification,
11, and ask you whether this refreshes your mem

A My recollection is that he was asked and
mitted that he had eaten at least three times
that before I was shown that

MR JOHNSON All right

BY MR AVERS

Q Mr Jamieson, did I understand you to
response to a question from the Prosecution that
stated that he knew his rights?

A No You mean

(At this MR JOHNSON I'm sorry, but
what I asked I asked if he was advised that, any
must had to be voluntary and could be used at a

THE COURT Just a moment

MR EVERS May I request that the reporte
the answer that was given to that question when
put to the Prosecutor a few minutes ago

THE COURT Yes

(A portion of the record was read as requested

BY MR EVERS

Q Does that refresh your recollection now as to
he said?

A Yes

Q Did you at any time on that day advise Mr
that he had the right to consult a lawyer?

A No

Q Did you suggest to him at any time that he
confer with his mother or father?

A No

Q Did anyone in your presence suggest any
those things?

A No

A I believe it was on a Monday, February 18th. The first I knew was when Mr. DeSimone came in and explained to me what they were planning to do, the connection that they thought possibly existed, the connection with the Franklin case and this boy being involved here.

Q Did you communicate with Judge Schamach?

A Yes, and the Judge said that I was to be there with him to look out to see to it that he was not browbeaten or abused in any way or pushed to any extreme.

Q How long have you been in the Probation Department?

A Since 1942.

Q What is your position there now?

A I am now a principal probation officer.

Q Did you have any training for this position?

A Well, I did welfare work.

Q Any education?

A College.

Q What college?

A Penn State, Rutgers.

Q What degree do you hold?

A I have a degree in pharmacy. I am a graduate in pharmacy.

Q And what other degrees?

A No other.

(fol. 210) Q What did you major in?

A I majored in pharmacy.

Q After that did you have any sociology?

A No, until I was employed by the Welfare Board in Passaic, we took courses without points at Rutgers.

Q The years that you have been in the probation office you have been dealing with juveniles?

A Yes. I would say I have been dealing with juveniles for about ten years out of the fifteen I have been there. The other five years I was in charge of all adults. Well, even then I was in charge of juveniles if they were placed on probation and lived in Passaic. My territory was Passaic and the adjoining towns.

Q On this day of February 20th when Mr. William Marks gave this statement, what did you observe about his physical condition?

A I thought he was—

Q What did you observe about his physical condition that late at night? One of these statements was at midnight.

A I thought he was relieved. I thought I would see some signs of tiredness in him but I noted very little. I thought he was quite relieved.

THE COURT: All right. That's all.

BY MR. EVERS:

Q Mr. Jarmolowicz, this attitude of relief to which you have testified could have been relief from the interrogation, too, couldn't it?

A He spoke much more clearly and more relaxed. He orated, he was orating freely; he wasn't under probably as much tension as he would be expected to be.

Q Well, would you say the boy was under tension during most of this day?

A Oh, I think he was under a tension of some sort but not unduly so.

Q So this attitude of relief was relief from tension, isn't that so?

A Yes, tension and conscience.

Q You don't know anything about the boy's conscience, do you?

A Well, I don't think any of us knows.

Q All you are prepared to say is that the tension that was apparent earlier in the day appeared to be relieved late at night when these statements were taken?

A Yes.

Q Did you see the boy any time between the 15th and the 21st?

A No.

Q And did you see him between the 21st and the 24th?

A I believe he was given the first test on the machine on February 21st.

Q That is correct.

A That is my first entry there. The last time I saw him was when he had gone on the 15th. Mr. Hammond and I went to the Shelter, then the interval I am ex-

Hol 223 DIRECT EXAMINATION

BY MR RUBENSTEIN

Q Billy, how old are you?
A Now?
Q Now
A 16
Q And how old were you in February of 1957?
A 15
THE COURT: Let's get his birthday.
Q What is your birthday?
A October 30
THE COURT: What year were you born?
THE WITNESS: 1941
Q Now, when you were taken into custody in February of this year what grade were you in school?
A Eighth grade.
Q Eighth grade?
A Yes, sir
Q Had you finished the eighth grade?
A No
Q Have you ever graduated from grammar school?
Q No, sir
Q Now, you were taken into custody on the 16th of February, is that right?
A Yes, sir
Q Where were you brought here?
A Police station

Q Where were you brought first, to the police station?
Hol 224 A Yes
Q How long were you at the police station?
A Overnight.
Q And then you were brought where?
A Here
Q And after you were brought here, that was then the 17th?
A Yes, sir
Q Until February 20th

THE COURT: Indicate where he was brought.

Q "Here" is the Children's Shelter, is that correct?

A Yes.

Q Up until February 27, 1957, where were you housed, kept?

A Where I slept?

Q Yes.

A Here.

Q At the Children's Shelter?

A Yes.

Q From the time you were first picked up until the 27th of February, did you see any member of your family?

A No, sir.

Q Did you see any of your friends?

A Yes, sir.

Q Where?

A Court House.

Q At the Court House. You are talking about whom?

A Robert Stopford and Harry Ogg.

Q That was during the questioning, is that right?

A Yes, sir.

Q No one came to visit you here, did they?

A Here?

Q Yes.

A I think my mother did.

Q Was that before the 27th?

A I don't know about that.

Q Well, before this alleged confession, had you seen your mother?

A No.

Q Your mother came, would that be after this alleged confession?

A That's right.

Q From the time you were first picked up until the time of this confession, did you consult with any attorney?

A No, sir.

Q Now, on the morning of February 26th, which is the day that this alleged confession was signed, made, what time did you have breakfast?

A About 7:00.

Q Where?
A Children's Shelter
Q How had you slept the night before?
A Not too good
Q Not too good?
A Yes, sir.
Q After you had breakfast here at 7:00 o'clock, did you stay here?
A No. The police picked me up.
Q About what time?
A Sometime in the morning.
Q And where did you go?
A To the Court House.
Q From the time you left to go to the Court House in the morning on the 29th until you returned here the early hours of the next morning, did you come back to the Children's Shelter on that day?
A No, sir.
Q Were you at the Court House all during that period?
A Yes, sir.
Q Well, you were out of the Court House for awhile, weren't you? Did you go anywhere with the Detectives?
A Yes.
Q When was that? What part of the day was that that you went somewhere with the detectives?
A In the morning. I am not sure of that, though.
Q Now, during the day after you got to the Court House, were you interrogated, were you asked questions?
A Yes, sir.
Q Who asked you questions?
A Sergeant Dettmore.
Q Did anybody else ask you questions on that day?
A Not that I remember.
Q I am talking about the 30th, the day upon which those alleged confessions were made.
A He may have asked me some questions.
(Pause.) Pointing to Detective Sergeant Vecchiglia
Q Did you meet Mr. Arthur on that day, also?
A Yes.

Q Did he ask you questions?

A Yes.

Q Were you with them, were you with Mr. DeSimone and Mr. Ventimiglia all day?

A Except when I was with Mr. Arther.

Q Did you have any conversation with Detective DeSimone concerning whether you should admit to these two occurrences?

A Yes, sir.

Q What did he say?

A He says—

MR. JOELSON: Fix a time.

Q About when was this that he said this to you?

A In the afternoon.

Q What did he say to you?

A He says to get it off your chest, it would make it easy on you.

Q What did you think he meant when he said it would make it easy on you?

. . . . .

Q What did you think Mr. DeSimone meant when he said that?

A Maybe the Judge would give me a break.

(fol. 228) Q Now, the first of these signed statements you made, when did they start asking you those questions? Was it afternoon or night?

A That there?

Q Yes.

A It was nighttime.

Q What was your physical condition at the time?

A I was tired then. I was tired.

Q How tired were you?

A I didn't have any sleep that night before.

Q How tired were you?

A What do you mean?

Q Did the fact that you were tired have anything to do with the giving of these confessions?

. . . . .

A Yes.

Q What?

A Well, I was being questioned a lot and I didn't sleep that night before and I was tired and I just signed the confession.

Q Why did you sign the confession?

[fol. 229] A Well, they were questioning me a lot and I was tired and weary and I just signed it.

Q On this day, the 26th of February, at any time on that day did you cry?

A Yes, sir.

Q When?

A When he brought Harry Ogg or Stopford in.

Q Which is it?

A I don't know which one it was at that—

Q Now, when you were picked up originally on the 16th or thereabouts, was it during the day or the night?

A Early morning.

Q You say early morning. About what time?

A About 2:00 o'clock.

Q Where were you when you were picked up?

A Sleeping.

Q Did they wake you up from your sleep?

A Yes, sir.

Q Where were you at the time?

A 421 Ellison Street, 421 East Ellison Street.

Q Where did they take you directly from that house?

A Police station.

* * * *

[fol. 231] THE COURT: I don't think that as a matter of law the evidence indicates that these statements are involuntary or that they were not freely given. I don't think proof as to any compulsion or any reward or any excessive importuning has been produced, and I will admit the documents at this time.

MR. RUBENSTEIN: All right.

THE COURT: I am not foreclosing the boy or his [fol. 232] attorneys from producing further evidence if they have any with respect to these statements. Bring it in at any time if there is anything that you think

will have any bearing upon it. At any time you can produce it. They will be marked in evidence. The first one, which was S-5 for identification, will be S-5 in evidence, and S-6 for identification will be S-6 in evidence.

(Exhibits S-5 and S-6, previously marked for identification, received in evidence.)

* * * * *

VINCENT DESIMONE, resumed the stand, testified further on his oath as follows:

MR. JOELSON: Does your Honor want me to read these statements into the record or is it enough just to submit them in evidence?

THE COURT: I think they ought to be read.

MR. JOELSON: All right. I think Detective DeSimone has been sworn already, and—

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. JOELSON:

Q Detective DeSimone, you took this statement marked for identification as S-5 in evidence, did you not, from the alleged delinquent?

A I did, sir.

Q Would you please read your questions and answers?

THE COURT: Suppose you read them.

MR. JOELSON: I shall read from S-5.

THE COURT: What page is that?

MR. JOELSON: I am starting at Page 2. Page 1 merely being a frontispiece saying the document is a statement. "By Detective DeSimone: Question: My name is County Detective Vincent DeSimone. I am going to ask you questions concerning the assault on Naomi Wertz on February 24, 1959 at approximately 10:45 p.m. in Paterson, New Jersey. Do you agree to give a statement? Answer: Yes. Question: Is this statement to be given by you voluntarily without any threats or promise of reward, knowing that it will be used against you in a trial? Answer: I agree. Question: What is your

you obtain it? Answer: I found on the road where some men were working. Question: On what street? Answer: On 32nd and 15th Avenue. Question: What was your reason for standing on the corner of 13th Avenue and East 31st Street on that evening? Answer: I was looking for a pocketbook. Question: Where did you have the pipe while you were waiting? Answer: Down my left leg. Question: Inside your pants? Answer: Yes. Question: Left leg or right leg? Answer: Left leg. Question: What were the weather conditions that night? Answer: It was snowing. Question: Did you take anything from the woman beside her purse? Answer: A package. Question: Will you describe the package? Answer: It was just about like this package. Question: Will you describe the purse that you took on that evening? Answer: It was a big purse, it was brown. Question: Have handles on it? Answer: Yes. Question: [fol. 236] This package that you referred to, was it about the size of this vanilla envelope? Answer: Yes. Question: What size? Answer: 10 by 15. Question: Getting back to the purse, does this purse that I am holding before you look like the purse that you took? Answer: Yes. Question: Was it exactly like this brown purse I now have before you? Answer: Yes. Question: When you opened the purse in the bathroom, was the bathroom well ligheted? Answer: Yes. Question: Did you take anything from the purse beside the money? Answer: No. Question: Did you notice anything else in the purse beside the money? Answer: Yes. Question: What? Answer: There was a white box in there, a watch. Question: What kind of watch, ladies or mens? Answer: It was a ladies. Question: A wrist watch or lapel watch? Answer: A wrist watch. Question: What else was in the purse? Answer: A pen and pencil set. Question: What else? Answer: A wallet and a lot of personal items. Question: Did you notice a mirror, compact, handkerchief and other such things in the purse? Answer: Yes. Question: What did you do with these other articles? Answer: Left them in the purse. Question: When you did what? Answer: When I threw it in the garbage can. Question: Did you place this bag on

top of the garbage in the can? Answer: No. Question: [fol. 237] What did you do with it? Answer: I lifted some of the garbage up and put some other garbage on top of that. Question: Had you been to this apartment house before this evening? Answer: Yes. Question: When? Answer: I usually go there with Robert Stopford. Question: Why did you go there with Robert Stopford? Answer: He said, 'let's make it a hide-out.' Question: When was the last time prior to this evening that you were there? Answer: Late this afternoon, I took the detectives there. Question: When prior to that were you there? Answer: I was there with Stopford. Question: When? Answer: In the summertime. Question: This past summer sometime? Answer: It was in the summertime, I remember that. Question: Why did you go in there at that time? Answer: Stopford and me we used to go in the bathroom and smoke a cigarette. Question: Did you go in prior to the time in the summer? Answer: Yes. Question: Would that be in the early spring? Answer: Yes. Question: Why did you go in there at that time? Answer: I went in there because I had another bag and I shared the money with Stopford. Question: How much did you give Bobby Stopford from that bag? Answer: $20. Question: How much did you keep? Answer: $30. Question: Will you describe the woman that you assaulted on [fol. 238] February 24, 1956, on East 31st Street? Answer: She was about my size. Question: How tall are you? Answer: I am about 5 foot 8 inches. Question: How old was she? Answer: She was about 35. Question: What was she wearing? Answer: She wore a long dark coat. Question: You don't—" and then the word "know" is written in in ink "—whether she had a hat on? Answer: No. Question: How many times did you strike her? Answer: One time. Question: What happened after you struck her? Answer: She fell down. Question: Where was she when she fell? Answer: On the sidewalk. Question: On what street and between what streets? Answer: On the west side of 31st between 13th Avenue and Broadway. Question: At approximately 5:00 p.m. today did you go to the scene

with Detective Sergeant Peter Ventimiglia, Detective Joseph Meola and myself? Answer: Yes. Question: Did you at that time and place describe the assault and demonstrate how it occurred? Answer: Yes. Question: Did you also show us where you went and what you did after the assault? Answer: Yes. Question: Is there anything further you would like to add to this statement? Answer: No. Question: Is everything you told us the truth? Answer: Yes. Question: Have you been threatened or abused in any way? Answer: No. [fol. 239] Question: Have any promises of reward been made you? Answer: No. Question: When was the last time you have eaten and what did you eat? Answer: About 7:30, and I ate coffee, a sandwich and pie. Question: How many times did you eat today? Answer: Three times. Question: After you have read this ten-page statement and made any corrections you may find necessary to make, will you sign it? Answer: Yes," and it is signed and witnessed as previously testified.

Now, if your Honor please, I will read S-6 beginning with Page 2, Page 1 being merely a frontispiece.

"By Detective DeSimone: Question: My name is County Detective Vincent DeSimone, I am going to ask you questions concerning the assault on Giovanna Giambra on November 12, 1956, between 8:15 and 8:30 p.m. in Paterson, New Jersey. Do you agree to give a statement? Answer: Yes, sir. Question: Do you give this statement voluntarily without any threats or promise of reward knowing that it will be used against you in a trial? Answer: Yes. Question: What is your name? Answer: William Richard Monks. Question: What is your age? Answer: 15. Question: When were you born? Answer: October 30, 1941. Question: What is your occupation? Answer: School student. Question: [fol. 240] Where and with whom do you reside? Answer: Mother, father and sister. Question: What is your address? Answer: 296 East 31st Street. Question: How long have you resided there? Answer: Eight years. Question: Are you presently in custody? Answer: Yes. Question: Where have you been detained? Answer: Children's Shelter. Question: Why were you taken in-

to custody? Answer: Purse snatching. Question: On November 12, 1956, in the early evening, where were you? Answer: At home. Question: Did you go out that evening? Answer: Yes. Question: Will you tell me in your own words what time you went out and where you went? Answer: I left my home around 7:30. Question: And you walked to where? Answer: Park Avenue and 31st Street. Question: What did you do at Park Avenue and East 31st Street? Answer: I dug up the pipe that I buried there where they are now building an apartment. Question: Then what did you do? Answer: Stuck it down my leg inside my trousers. Question: Which leg? Answer: My leg. Question: Then what did you do? Answer: I walked down 32d Street and then I went to 15th Avenue to 33d Street and then to 13th Avenue and up to Wall Avenue. Question: What did you do when you arrived at 13th Avenue and Wall Avenue? Answer: I hid behind the wall on [fol. 241] the southeast corner, behind the wall. Question: What is located on the southeast corner of Wall and 13th Avenue? Answer: Big house with a big wall around it. Question: Why did you hide behind the wall? Answer: I was waiting for a purse. Question: What do you mean when you say you were waiting for a purse? Answer: I was waiting for a woman to walk by with a purse so I could take it from her. Question: What time was this? Answer: It was after 8:00 sometime. Question: While you were hiding there did you see a woman? Answer: Yes. Question: Where? Answer: On Wall Avenue. Question: Between what streets? Answer: 13th and 14th Avenues. Question: On what side of the street? Answer: East side. Question: Going in what direction? Answer: Towards Broadway. Question: How far from you was she when you first saw her? Answer: Almost a block. Question: Did you watch her entire time from the time when you first saw her? Answer: Yes. Question: What did you do then? Answer: Took out the lead pipe and started toward her. Question: How far from you was she at this time? Answer: About 20 feet. Question: What did she do? Answer: She saw me and then she turned

and ran diagonally toward the Nuns' house. Question: What did you do? Answer: I ran after her. Question: [fol. 242] Then what did you do? Answer: She started to scream and I hit her on the head with the lead pipe and she didn't go down and I hit her again. I picked up the p[illegible] and ran down 14th Avenue. Question: Where was she when you struck her? Answer: In the middle of the road on Wall Avenue, between 13th and 14th Avenues. Question: When you struck her what happened. Answer: She fell down and her head started bleeding and I got the pocketbook and ran dwn 14th, down Wall and 13th Avenue. Question: When you got to 14th Avenue and Wall Avenue, what did you do? Answer: I started running toward 33d Street and I saw people, so I turned around and started running toward the Park. Question: Where did you go then? Answer: Straight through the Park down to the river. Question: What did you do when you got to the river? Answer: I took out the wallet, took the money out, put the wallet back in and I closed the pocketbook and threw it in the river. Question: How much money was in the pocketbook? Answer: About $3. Question: What did you do with the lead pipe that you struck her with? Answer: I threw that in the river, too. Question: Can you tell me where in the river? Answer: It was further out than the pocketbook. Question: Can you tell me at [fol. 243] what point along the river bank you were when you threw the purse and lead pipe into the river? Answer: Across the road from the baseball field where the generator is located, which is enclosed by a barbed wire fence. Question: Will you describe the purse that you took from Giovanna Giambra? Answer: It was a black purse. Question: Silk, leather or suede? Answer: I think it was leather. Question: Any handles? Answer: Yes, it had handles. Question: What else? Answer: It had an emblem, a big gold emblem. Question: Did you notice the other contents of the bag? Answer: There was some keys in there, a wallet. Question: What else? Answer: A hanky and a compact and some personal items. Question: Where did you go then? Answer: I ran down the highway. Question: Towards where? An-

swer: Towards 10th Avenue Circle, up 10th Avenue to 28th Street and down 28th Street to 15th and 14th Avenues, and I ran down all through the yards to my back yard. Question: Which is where? Answer: On East 31st Street. Question: Then what did you do? Answer: I stayed home. I went into the house. Question: Who was home when you arrived? Answer: My father and my sister. Question: About what time was this? Answer: It was a little after 9:00. Question: What kind of a night was it on November 12, 1956? Answer: I am [fol. 244] pretty sure it was a clear night. Question: Did you have clear vision? Answer: Yes. Question: Was it light or dark at the point where you struck her? Answer: It was very dark. Question: Was it light or dark at the point where you first saw her? Answer: It was a little lighter. Question: Do you remember a light on the corner of Wall and 13th Avenue, a street light? Answer: Yes, there is a street light. Question: Will you describe the woman you struck? Answer: She was a good looking girl, about 20 to 25, wearing a dark coat, and a little shorter than me. Question: Do you remember which side of the head you struck her? Answer: I grabbed for her purse. Question: You grabbed for her purse on her right arm? Answer: Yes. Question: And you turned her towards you? Answer: Yes, and she faced me, she was fighting for her purse and I hit her on the right side of the head. Question: Then what happened? Answer: She didn't let go and she—so I hit her again. Question: What happened then? Answer: She fell down. Question: What did you see? Answer: I saw some blood. Question: Where did she fall in the road? Answer: About the middle of the block. Question: Which way was head facing? Answer: I don't remember that. Question: You don't remember that? Answer: No. [fol. 245] Question: Now, getting back to the time when you arrived home, did you speak to anyone? Answer: No. Question: How were you dressed on November 12, 1956? Answer: I had these pants on. Question: What kind of pants are they? Answer: Overalls. Question: And what did you have on over them? Answer: A black leather jacket. Question: Where is that jacket now?

Answer: Home. Question: Have you worn that jacket since November 12th? Answer: Maybe once or twice. Question: When? Answer: Usually when I go out," and in ink was added "at night" with the defendant's initials. "Question: When did you first wear this jacket after November 12th? Answer: About a month. Question: Why didn't you wear that leather jacket? Answer: Because I read in the paper she said it was a leather jacket. Question: Were you alone that night when you assaulted this woman? Answer: Yes. Question: Is everything you have stated in this statement the truth? Answer: Yes. Question: Was it given by you voluntarily? Answer: Yes. Question: Were you threatened or mistreated by anyone? Answer: No. Question: Were you threatened or mistreated by anyone during the entire period of your interrogation? Answer: No. Question: Were you given any promise of reward? Answer: [fol. 246] No. Question: When was the last time you have eaten? Answer: About ten minutes ago I had a glass of milk. Question: When prior to that did you eat? Answer: About 7:30. Question: What did you eat at 7:30? Answer: A sandwich, pie and coffee. Question: When did you eat prior to 7:30 this evening? Answer: Early this afternoon I had the same thing. Question: When did you eat prior to that? Answer: This morning I had breakfast at the Children's Shelter. Question: After you have read this eleven-page statement and made any corrections you find necessary, will you sign it? Answer: Yes," and then it is signed and witnessed.

BY MR. JOELSON:

Q Now, Detective DeSimone, after these two statements, S-5 and S-6, were signed, when did you next see William Monks?

A That same morning. Of course, we left him—I drove Probation Officer Jarmolowicz up here and then drove Officer Jarmolowicz home and that same morning —I left him here a little after 1:00—that same morning I would judge about 9:00 o'clock.

Q Now, did you see William Monks after February 27th at any time?

A Yes, I did.

Q When did you next see him?

A On February 28th.

Q And did you have a talk with him on that day?

[fol. 247] A I did.

Q What was the conversation on that day?

A The discussion was in regard to the weapon. We were endeavoring to find a replica of the weapon that he had described to us and we had upturned a certain type of metal used by the Telephone Company, we had rather a long length of about two and a half to three feet of this particular type metal and we brought it up to him and I showed him and asked him if that was the type of material that he had used, and he answered no. He said, "It is somewhat similar to that," but he said, "It has different holes in the center and it is more like an I-beam with round holes in the center," and at that time I told him that we were going to endeavor to locate this weapon that was placed in the river.

Q Did you speak to him after that date, after February 29?

A Yes, sir. On March 1st we came back here again, and I had succeeded in getting a shorter piece, a sample of which I have here, and I asked him about that and he said, "Well, it is just about the length, it is about the same weight but it is a little wider and it has larger holes," and at that time I asked him to make a diagram for me, and this was on March 1st, and he made a diagram which indicated the approximate size, and there is a circle on there that indicated the size of the holes in the center. The weight and the thickness he said were [fol. 248] about the same as the sample that I have here.

Q This piece of paper—who made those sketches?

A William Monks and it is signed by him on the top of the sheet dated March 1, 1957.

Q And who wrote these words "weight and thickness"?

A I wrote "weight and thickness same," and after I had done it I said, "How about the weight, Willy?" He said, "Same." I said "How about the thickness?" He said, "Same." I said, "Willy, will you sign this?" and he

signed it. I believe—well, I know Mr. Jarmolowicz was present and I believe Detective Edmond was with me at this stage.

MR. JOELSON: I would like to offer this sketch in evidence.

MR. EVERS: No objection.

THE COURT: Is there anything on the other side of that, Mr. Joelson?

MR. JOELSON: No, sir.

THE COURT: All right.

(Sketch, received and marked Exhibit S-20.)

Q Were you ever at the Shelter in the presence of the defendant and his parents?

A That was on February 28th.

Q Who else was there?

A John Orr, who was then Superintendent here or whatever you call it, Detective Edmond, Probation Officer [fol. 249] Jarmolowicz, his mother, William Monks' mother and William Monks' sister, one of his sisters.

Q Do you recall any conversation at that time between William Monks and either one of his parents?

A There was no conversation relating to the crime in my presence. * * *

* * * *

CROSS EXAMINATION

BY MR. RUBENSTEIN:

Q Detective DeSimone, you say William had given you a story that he found this alleged weapon on a construction at 15th Avenue and 32d Street?

A Yes, sir. During the reconstruction he pointed out that spot. That is in one of the photographs.

Q He said he had found it in approximately February of 1956?

A That's right, sir.

Q You checked, did you not, to see if there was construction about that time?

A I did considerable work in that vein, sir.

Q You checked, did you not?

A Yes.

Q You found that there had been construction there at approximately that time?

A Yes, sir.

[fol. 250] Q Did you check with all the people involved in the construction?

A We spent at least a week, sir, Detective Edmond and I going to the Telephone Company, gas company, city engineer to check for permits. We went to various construction companies that do work on contract for the Telephone Company. Easily a week we spent trying to find a weapon such as the one that he described.

Q A very thorough job you would have had to have done?

A Absolutely.

Q And you never found such a weapon?

A We couldn't come up with any weapon. We could come up with one similar. I have a sample here.

Q You never came up with the weapon that he described, did you?

A No, sir.

Q You have never found the weapon he described, have you?

A No, sir.

Q You made an exhaustive search of every place that he told you he had thrown or put the weapon, did you not?

A Yes.

Q You have searched the river?

A Yes, sir.

Q You dug up where he told you to dig?

A Yes, sir, and we went beyond that and looked in places—once in your company I went underneath the porch of the furnished room house and crawled on my [fol. 251] hand and knees for perhaps an hour and a half and you were standing right outside the porch.

Q You never found a weapon, did you?

A No, sir.

Q Now, Mr. DeSimone, on the 26th, on the day when these statements, both oral and written were taken, Monks told you various stories, didn't he?

A In regard to what, sir?

Q In regard to either Weiss or Giambra.

A He told us two stories on Weiss and one story on Giambra.

Q Now, in regard to Weiss, he told you orally that he had done it in the afternoon?

A Yes, sir.

Q He recanted it?

A Yes, sir.

Q And then he gave you the written statement?

A Yes, sir.

Q Now, when he gave you the oral statement in the morning or in the early afternoon, he said he hit her with his fist, didn't he?

A Yes, sir.

Q And either you or Detective Ventimiglia said you knew that that could not be so?

A Both, I believe.

Q You knew it couldn't be so and you told him so, that it couldn't be so?

A Yes, sir.

Q And that is when he then said he used a lead pipe?

[fol. 252] A Yes, sir.

Q Which he described as circular?

A Yes, sir.

Q Because you wanted him to know that you weren't being fooled by anything he was saying if it was not so?

A We simply told him the facts, sir.

Q Then he continued with his story and he said he took this package, too, besides the purse?

A Yes, sir.

Q You knew that wasn't so?

A Yes, sir.

Q Did you tell him it wasn't so?

A No, sir.

Q At that point you didn't tell him?

A We asked him to give his version of the story and as he told it we put it down.

Q Why did you tell him that it wasn't true when he said he used his fist?

A For this reason—I said to him, "Willy, I don't believe you are telling me the truth." I said, "This woman

couldn't have possibly incurred this injury, the type injury she had by someone striking her with a fist. Her head was fractured on the top," and I spoke his language, I said, "Willy, she would have to go up and do a sailor's dive on the sidewalk in order to get that type of fracture," and then he said to me, "Well, isn't it more [fol. 253] serious if you use a weapon rather than your fist?" I said, "Willy, I am not concerned with whether it is serious or not, I only want the truth from you." Then he says, "All right, I used a lead pipe."

Q But you had stopped him because you knew that what he was saying was not true?

A Yes, sir.

Q Well, you knew when he said he had taken the package that that was not true.

A Well, let's put it this way—

Q Answer the question. Did you or did you not?

A I wasn't exactly positive that he hadn't taken the package at that time because I had only made a cursory investigation of the Weiss crime and I was concerned more with the modus operandi rather than these small details. That was a small detail, whether or not a package was taken.

Q You think that was a small detail, that is why you didn't go into it?

A To me when I was digging into the modus operandi, how she was struck down, etc.

Q Then he told you he went to this house, is that correct?

A Yes, sir.

. . . . .

[fol. 254] Q William told you that there had been snow on the ground?

A Yes. I believe we mentioned that.

Q That was confirmed in the investigation, the reports, that there had been snow on the ground that night?

A Yes, sir.

Q And he told you he went to this house on the corner of 15th Avenue and East 31st Street?

A Yes, sir.

Q And that afternoon you went with him, isn't that correct?

A Yes, sir.

Q And you had him show you or re-enact the story that he had given you?

A Yes, sir.

Q You took him first—

A That afternoon it was simply, "point out the spot where you were standing; point out the spot approximately where you struck her down." Then we jumped in the car again and, "Now tell us where you went," and we were riding along the street and he said, "Well, I ran up here, then I went into this yard and into that door," so we got out and walked in and walked into the bathroom. That was the first time I had ever seen that bathroom.

[fol. 255] Q He said he had gone up the street, is that correct?

A Yes, sir.

Q Now, this house in question faces on 15th Avenue?

A Yes, sir.

Q The side of the house is almost to the sidewalk line? I am referring to the side that is on 31st Street.

A Within two feet.

Q Did he go directly up to the rear door?

A Well, there is a driveway there, behind the house there is a garage that faces 31st Street and he walked diagonally across this driveway right to the stairs, up the stairs and into the door. • • •

• • • • •

[fol. 256] Q Mr. DeSimone, he told you that he came in a southerly direction up 31st Street, is that correct?

A Yes, sir.

• • • • •

Q Suppose you show us by using the red pencil the direction that he told you that he took from this point when he reached the property line to get to the back door.

A I would like to clarify something at this point. [fol. 257] When he went with us we walked across the driveway and towards there. However, when he told us, he simply said, "I went in that back door, I went

down this street and in that back door," so naturally the straight line is the shortest distance between two points, so we walked directly to the door, but he didn't specifically say that, "I walked right in these footsteps." He said, "I went in that back door."

Q Did you re-enact the crime with him at any time?

A Later on.

Q Did you walk over with him?

A Yes.

Q Will you show us which way he said he then walked?

A I couldn't fix it exactly but we went from the sidewalk—

Q Approximately.

A Somewhere from this point of the driveway in a diagonal direction to the bottom of the stairs. When he reached halfway up the stairs I said, "Hold it there, Willy," and then he stood there and I asked Identification Officer Garrity to take a photo at that point.

Q Then he testified that he went into the house, into this bathroom, is that correct?

A That is correct.

Q He told you, he didn't testify. He told you that?

A Yes.

[fol. 258] Q Did he tell you how long he stayed in the bathroom?

A Long enough to open the purse and remove the money.

Q In your impression that wasn't a very long period of time, was it? Five minutes, a few minutes?

A Long enough to take the money out. I don't know just how long he stayed in there. I know he took the money out, period.

Q Then he said he went back out which door?

A The same door.

Q The same door?

A Yes.

Q And he went where?

* * * *

[fol. 259] A It isn't clear. After he came out of the furnished room house immediately after the Weiss crime —in reconstructing, you mean?

Q Yes.
A Then he led us to the garbage shed.

* * * *

Q In other words, he went from this door—
A Came out this door. We all walked around here and he stood there and opened the garbage shed and I said, "which barrel, Willy?" and he pointed, I believe it was the second barrel, first or second, and I said, "Hold it there," and I said, "Jule, please take a picture," and he took another picture.
Q Would it be a safe assumption to say, Mr. DeSimone, that when he came out the back door and went to the garbage shed that he would have left footprints in the snow leading from the back porch to the garbage shed?
A Definitely. If there was snow there, definitely.
Q Did he say where he went from the garbage shed?
A He then went to the corner of Park Avenue and 31st Street.
Q Did he say what route he took to get from the garbage shed?
A Up 31st Street, directly up 31st Street to Park.
[fol. 260] Q Did he say how he got to 31st Street from the garbage shed?
A No, sir, but we came out this driveway again and at this point we entered our vehicle. In other words, if we were walking going along a street to a point where we were on the sidewalk, we rode slowly and he said, "I walked up here." When we got to a point that went off the sidewalk, then we got out of the vehicle and I walked with him.
Q So that he testified that he walked up 31st Street—
A Yes.
Q (Continuing.) —up to 15th Avenue?
A Yes, sir.
Q At least to 15th Avenue?
A Yes.
Q And is it a safe assumption to say that if he did walk there he would have left footprints?
A I believe so.

Q He would have left footprints in the snow?
A I believe so.
Q Now, the first time he told you the story, Mr. DeSimone, about the Weiss matter, did he not tell you that the only thing he took out of the purse was the money?
A Yes, sir.
Q He left everything else in the purse?
A No, no. I must correct myself there. The first time, the first story the purse and a wrist watch and [fol. 261] some other article were buried in that patch of ground, I believe it was on 26th Street where I dug. That is what I was looking for—we were looking for the watch and I forget—some other article, but the watch was one of them. That is what I was mainly looking for.
Q Did he say it was in the purse the first time?
A He said he had buried it.
Q With the purse?
A The first time—now I must correct myself—I was confused whether we were talking about the first reconstruction or the second.
Q I am talking about the first time—
A On the first one there was no talk of the garbage shed. That was on the second. On the first one he had buried it on 26th Street, I believe it was. I can check that with my notes.
Q The first time he told you this he told you this orally, is that correct?
A Yes, sir.
Q He told you he buried the pocketbook, is that correct, with the watch not at this address on 31st Street but in this empty lot—
A Not on 31st Street.
Q On—
A 26th or 25th.
Q Whatever street it was. Is that correct, he buried the purse with the watch?
A That's right.
Q Then subsequently he told you he just buried the watch and not the purse?

[fol. 262] A Well, we were proceeding under the assumption that something was buried, and when I got done digging there I walked over and he said, "I didn't do it, I didn't do it at all."

Q I didn't ask you that, Mr. DeSimone.

THE COURT: What was the question?

(The question was read by the reporter.)

A No, I don't believe there was any such exchange because the next thing he said was, "I didn't do it," as I was digging, and I dug up a patch of ground bigger than this room, turned it over with a spade—

Q Were you in court when Detective Ventimiglia testified?

A Yes, sir.

Q You heard him testify, did you not?

A Yes, sir.

Q Did you hear Detective Ventimiglia say that when they approached there he then said that he had only buried the victim because he said you fellows have the purse?

A He might have said that but we thought perhaps the purse was in there.

Q I didn't ask you what you thought. Is that what he said then?

A No, I don't believe so. Perhaps he might have but I don't believe so.

Q Now, you asked him the questions concerning the Giambra matter, did you not?

A In the statements are you referring to, sir?

[fol. 263] Q Yes, the statement marked S-6.

A I asked every question in both statements.

Q Now, in that statement or before you took the statement he had told you a story, had he not?

A Yes, sir.

Q He had told you a story verbally.

A Twice.

Q And he told you—

THE COURT: Twice on Giambra?

THE WITNESS: Yes, sir, once alone and once in the presence of Detective Sergeant Ventimiglia, Detective Me-

ola and Probation Officer Jarmolowicz, a half hour to three-quarters of an hour apart. He had told me the first story alone, then I didn't make any mention of it, we went out and we sat down and ate and didn't discuss the case at all. Then I said, "Willy, will you tell me the story again?" and as he told me the story I scribbled some notes.

Q And those times he told you that he threw this weapon into the river?

A Yes, sir.

Q He told you that the first time, he told you that in the room?

A Yes, sir.

Q Did he tell you that the second time?

A Yes, sir.

Q He told you that when you asked him these ques-[fol. 264] tions in this confession?

A Yes, sir.

Q Subsequently you discussed with him again the question of what happened to the weapon?

A Yes, sir.

Q Did he tell you a different story?

A Not until March 2d of 1957 and that story was first told to Detective Edmond and subsequently to me.

Q On March 2d what did he then tell you about the weapon?

A On March 2d Detective Edmond went in and spoke with him with Probation Officer Jarmolowicz and then he came out and he said, "It isn't in the river," so I went in with him and I said I believe—no, Detective Edmond repeated what he had told him and he said that night—

Q Who said?

A Monks. He said, "That night as I was running, when I fell by that tree that I pointed out to you in the park I had the purse in my jacket and I had the weapon in my hand, when I fell I dropped the weapon. I picked it up and then ran not between the buildings or to the right of the buildings as I showed you, but to the left and I ran near the soldier's monument and there are two small cannons behind it and there is an umbrella like tree there and I threw the weapon under the tree.

I went down to the river, threw the purse in the river and continued home, as I had described. Two days later I was worrying about the weapon, I knew they were [fol. 265] searching, so I went to the park, I picked up the weapon, put it in my pants leg and threw it in the same garbage pail where I threw the Weiss purse."

Now, at this point I couldn't visualize—and Probation Officer Jarmolowicz and Edmond were with me—I couldn't visualize the park, the monument, I didn't remember offhand, so I immediately proceeded—

Q I think you finished answering my question.

A I am trying to clarify all I did in this vein.

Q He told you this story then, is that correct?

A Yes.

Q You will concede that the second story concerning what happened to the weapon is different than what he had previously told you?

A Yes, sir, and, of course, he had been confronted by Detective Edmond, and Detective Edmond told him the skin diver had been all over the bottom of that river and if the weapon were there they would have surely found it, and as a result he told this other story.

Q Did he say anything different other than the fact that the purse had been thrown in the river?

A No. He maintained—as a matter of fact, he said to Detective Edmond, "Well, you didn't find the weapon because it wasn't in there but you ought to find the purse."

Q The skin divers never found the purse, did they?

A No, sir. It was four months later.

[fol. 266] Q No one ever found the purse?

A No, sir, and I made many efforts, I went into a row boat and went down one side of the river and up the other on three or four different occasions. One day I spent ten hours in the river in a boat.

Q Very thoroughly?

A Yes, very thoroughly.

Q You examined all the nooks and crannies of the river?

A Every nook and cranny in the river.

Q And had skin divers go down?

A Skin divers only covered I should judge 25 to 50 feet in either direction of the point where he said he threw it in.

Q And no purse has ever been found?

A No, sir.

MR. RUBENSTEIN: That's all.

MR. JOELSON: That's all.

BY THE COURT:

Q Detective DeSimone, you first saw the boy on what day?

A I first saw William Monks on February 18 of 1957.

Q Now, from the time you saw him and all during the time you were present at any of these inquiries or questioning, was anything said to him by you or by anyone in your presence with reference to Officer Mahull's testimony about the tracks being made from the scene [fol. 267] of the Weiss crime to the house at 465 15th Avenue? Do you understand my question?

A Was anything said to him about those tracks?

Q Yes.

A Perhaps there was, sir, during the latter part of the interrogation, after we had established that he was in the custom of going to that house with Stopford.

Q Well, the Weiss statement says that he went to this house, doesn't it, and what I am trying to arrive at is this: Did he give you that statement before he knew that you knew about the tracks in the snow, or don't you recall?

A Before we knew of the tracks in the snow?

Q You knew about the tracks in the snow.

A Yes.

Q But did you or anybody in your presence before this statement was given tell him that you knew about the tracks in the snow?

A We might have, sir, but there is one thing I would like to clear up, sir. We saw him on February 18th and it was just a general conversation. Like I say, we were talking about purses, there was no reference to either Weiss or Giambra, but I had been on the Giambra investigation for almost a year then and it was only the

fact that I had read in the paper about purses being buried and we couldn't find our purses that caused me [fol. 268] to—either Ventimiglia called me or I called him and said, "I think we ought to look into this," so we obtained permission from Judge Schamach, and then he say, "You can't speak to that boy unless you are with a Probation Officer," so I contacted Mr. Jarmolowicz. He went to the court, then we came up here. Now, when we—

Q Repeat that first conversation to me.

A Yes, sir. We came in and frankly on the way up Ventimiglia and I in the presence of Jarmolowicz were discussing—we said, "What are we going to ask him?"

Q Well, now, for the sake of evidential rules just tell us what was done in the presence of William.

A We walked into the room, introduced ourselves—he knew Jarmolowicz, I believe—we introduced ourselves and Ventimiglia started talking. The theme of it was, "Willy, we heard you are in on these crimes. Now, who put you up to this? Who taught you how to steal bags? Who told you to bury them?" and things like that. He said, "Nobody, nobody, man." Every other word was "man," very surly, and every other word was "man." "Oh, come on, you are only a pup, who put you up to it?" "No one." So then I got into the conversation. I said, "Willy, did you ever take any other bags in that general area?" He says, "Yes, I guess so." I says, "Willy, let's try to pinpoint some of these other thefts. Let's start [fol. 269] back with 25th Street. Did you ever take a bag along 25th Street?" I proceeded to 26th, on some of them he said, "Yeah, I think I took one there." I didn't elaborate. "How about 27th, 28th, 29th, 30th?" At this point he said, "I didn't hit that woman." I said, "What woman?" He says, "The Weiss woman, the one who was hit by the hospital." So I said, "When did that happen?" He says, "About a year ago." I dropped it right there.

"How about 32d Street, 33d Street?" We got varied answers. "Wall Avenue?" "I didn't hit that girl." "What girl?" "The Giambra girl." "When did that happen, Willy?" "November 12."

I said, "Willy, how do you remember that date?" He says, "Oh, I don't know, I saw it in the paper." I said, "Where were you that night?" "Oh, I was on the corner of 15th Avenue and 22d Street in the candy store." I said, "How do you remember Weiss?" He says, "Oh, I read it in the paper," he says, "It was snowing." I think he made reference at this point that it was snowing that night, so we dropped it right there. So we asked him one or two questions in that vein, "How do you remember this?" Then I asked him, I said, "Willy, are you willing to take a lie detector test if permission is granted by the court?" He said, "Oh, sure, they are fake, they can't tell you nothing." I said, "We are only interested if you are interested. Are you willing to take one?" He [fol. 270] said, "Sure, I will take it," and that was the last conversation I had with William Monks until the afternoon of February 26th from the time when we left the Shelter here, except perhaps to say good morning to him, because we then arranged a lie detector test for Thursday, February 21st, and in the interim the Judge forbade us from seeing him. Mr. Arther came in and we had to brief him, give him the information that we had. He put him on the test—

* * * *

[fol. 271] Q What about William's general physical condition on the 26th? He says he was tired and weary. Did you observe his condition?

A Yes, sir.

Q And what was his condition that you saw?

A I don't believe that he was—

Q From what you saw, now,

A Yes, sir. From my observations throughout the day he was bright, alert, at times very belligerent and surly, cursed many times. In intervals he would make outbursts when we would confront him with certain things and every other word was, "man, man, man," until the point when I had the talk that has been referred to so often as a fatherly talk. Thereafter he was calm and relaxed. As a matter of fact, after I had taken the second story, the second oral story, I summoned Mr.

Joelson, and Mr. Joelson came in and Mr. Joelson sat there and had a talk with him, he was bright eyed and wide awake, and I believe Mr. Jarmolowicz will bear out [fol. 272] that he seemed to lose that tenseness in the middle of my chat with him and for the first time didn't act like a tiger. As a matter of fact, he even threatened bodily injury to Mr. Arther at times.

MR. EVERS: I think that is an objectionable statement.

Q What did he say—

A To Mr. Arther?

Q (Continuing.) —that you heard? Did you hear any of these things?

A Yes, sir. One time I was walking in the room and Mr. Arther had come out and I went back in and I heard the end of a thing, "I will hit him with a chair," but he wasn't talking to me, he was sort of mumbling and it was the end of a conversation, "I will hit you with a chair," and Arther then came out and verified my—

Q I don't want to hear what Arther said unless he was there. Was he there?

A Yes, sir, he was in the room. This was at different times. Then he would relax and be semi-cooperative and then he would get belligerent again and surly, but in his conversation every other word was, "man, man, man."

Q When you went back to the park and said you couldn't visualize the cannons and the trees—did you go back to the park to see the situation?

A Yes, sir.

• • • •

[fol. 274] THE COURT: All right. Now, you have what exhibit there?

THE WITNESS: S-7, sir.

THE COURT: What does that show?

THE WITNESS: This shows William Monks standing alongside of a tree which is on the southeast corner of 13th Avenue and East 31st Street near the nurses' home, and it is the point where he said he stood while he was waiting before the Naomi Weiss crime, shortly before the crime.

THE COURT: Now, S-8, what does that show? Were you there when these pictures were taken?

THE WITNESS: Yes, sir. It was under my direciton that these were taken. This photo was taken before this one, sir.

THE COURT: S-8 was taken before S-7?

THE WITNESS: Yes, sir. S-8 is the corner of 15th Avenue and 32d Street where he said he found the weapon on February 24th during the day. That was the day of the Weiss crime in 1956.

• • • •

[fol. 275] THE WITNESS: Now, S-9, these aren't exactly in the sequence that we took them, sir. S-9 designates the point on East 31st Street and Park Avenue, the southeast corner where he buried the weapon after the Weiss crime. However, he explained that this construction wasn't going on at that time. In other words, there is an excavation right there. He is pointing to the general spot near the hedges but he said this hole wasn't there at that time. But I said, "Point to the spot anyway. Regardless of what the condition is point to the exact spot where you buried the weapon," and he did so.

• • • •

THE COURT: When did he say he dug that weapon up again?

THE WITNESS: He dug it up on November 12, 1956, and I believe he said they had started the con-[fol. 276] struction, but this hole, this excavation right here wasn't there when he dug it up, but when he buried it there wasn't anything there.

THE COURT: This is S-10—

THE WITNESS: S-10, he is pointing out the approximate spot where he struck down Naomi Weiss.

THE COURT: And the figure on the right is you and the figure on the left is Mr. Jarmolowicz?

THE WITNESS: No, Detective Ventimiglia.

THE COURT: Now S-11.

THE WITNESS: S-11 depicts the rear door of the furnished room house on 15th Avenue and East 31st

Street, and I might point out, sir, that this window is the window of the bathroom.

THE COURT: Indicating the window with two white squares in it in the upper left hand corner of the picture.

THE WITNESS: Yes, sir.

THE COURT: Mr. Jarmolowicz is in the dark coat and you are in the foreground?

THE WITNESS: Yes, sir.

THE COURT: And is that Detective—

THE WITNESS: Detective Ventimiglia.

THE COURT: And William Monks has his hand on the door knob?

[fol. 277] THE WITNESS: Yes, sir.

THE COURT: S-12.

THE WITNESS: S-12 is in the bathroom of that furnished room house on East 31st and 15th Avenue, and directly behind this shower curtain there is a bathtub and that is where that window lays that you were just looking at.

THE COURT: And that is Probation Officer Jarmolowicz?

THE WITNESS: Yes, sir.

THE COURT: S-13.

THE WITNESS: S-13 is William Monks pointing to a garbage pail in the shed where he said he disposed of the Weiss purse and subsequently the weapon used in both crimes. Of course, when he said he threw the weapon in the second time, he didn't specifically say that barrel but he said in the same shed where he threw the Weiss purse.

THE COURT: S-14.

THE WITNESS: S-14 is the southeast corner of 13th Avenue and Wall Avenue and he is standing in a position that he said he stood in on November 12, 1956, waiting for someone to come along. That was the night of the Giambra assault.

THE COURT: Is that S-14?

[fol. 278] THE WITNESS: S-14, yes, sir.

THE COURT: This is S-15. Where is 16? What does S-15 show?

THE WITNESS: S-15 shows William Monks pointing to a point on the easterly side of Wall Avenue between 13th and 14th Avenues—I would say closer to 13th Avenue, and he pointed this spot out as the point where the Giambra girl was when she first turned and started fleeing. In other words, he stated she was walking up this way and he came around the corner and started towards her and she turned and started running diagonally towards the Nuns' home.

THE COURT: According to William was she walking into the picture?

THE WITNESS: Yes, sir. He was up at this corner.

THE COURT: And she was walking—

THE WITNESS: Walking toward the picture, when he came around the corner she started fleeing diagonally across the street.

THE COURT: All right. S-16.

THE WITNESS: S-16 is William Monks standing in the middle of the roadway on Wall Avenue at a point approximately midway between 13th and 14th Avenue pointing to the approximate spot where he struck down [fol. 279] Giovanna Giambra.

THE COURT: S-17.

THE WITNESS: S-17 shows a point in East Side Park approximately 50 to 100 feet almost due east of the end of 14th Avenue, and I might add, sir, that previous to taking this photograph there was no mention whatsoever of this tree. As I stated previously, as we were reconstructing this crime, if he had walked along the sidewalk—we rode in a car, when we got to a point where he went off the sidewalk, I got out of the vehicle and I got out here on 14th Avenue right at the junction of the Park and—

THE COURT: You are indicating the street—

THE WITNESS: That is 14th Avenue.

THE COURT: (Continuing.) —on the left hand side of the picture as you are facing it?

THE WITNESS: Yes, sir. I got out of the vehicle and I said, "Now, Willy, walk in exactly the same direction as your ran on November 12th." As we were walking up this general direction towards this tree—it isn't visi-

ble in the photo clearly, but this branch comes right down close to the ground—Officer Jarmolowicz was on the other side of him and he suddenly stopped and he said, "I fell here." I then summoned ID Officer Garrity who was [fol. 280] riding with Detective Sergeant Ventimiglia back and had him point to the tree, and we took this photograph, but previous to this time we had no knowledge whatsoever of this tree, and he again referred to this tree in his last story on the weapon when he said, "You remember when I told you I fell at that point I dropped the weapon and I picked it up and ran the other way—" He changed his story from this point on just as to the running, the exact direction, and the weapon.

THE COURT: There is just one other picture there.

THE WITNESS: S-18. William Monks is standing on the bank of the Passaic River at a point almost due east of the baseball field in East Side Park near a generator which is on the easterly side of the highway, pointing into the river at the approximate spot where he said he had disposed of the purse and the weapon at this juncture.

THE COURT: Now, were all of these pictures taken the same day?

THE WITNESS: All of these pictures were taken on the same day, sir.

THE COURT: And what date was that?

THE WITNESS: February 27, 1957. I believe we [fol. 281] started at approximately 9:30 a.m. or thereabouts and it took us maybe a half hour to an hour and—

THE COURT: Now, the previous day, on the 26th, did you go on 31st Street with him and ask him questions with respect to the Weiss crime?

THE WITNESS: You mean as far as reconstructing, sir? Yes, sir, that is all that was done.

THE COURT: Nothing on the Giambra case?

THE WITNESS: Nothing whatsoever on the Giambra case insofar as reconstructing.

THE COURT: That was on the 26th?

THE WITNESS: On the 26th.

THE COURT: Well, then, from the time he first told you about the Weiss matter, you went out with him

on the 26th and then you came back and took these statements, S-5 and S-6?

THE WITNESS: Yes, sir.

THE COURT: That's all.

MR. JOELSON: I have one or two questions on that, sir.

THE COURT: All right.

BY MR. JOELSON:

Q Now, when Monks made to you his oral statement concerning his role in the Giambra affair, did you have him identify any places on any sketches?

[fol. 282] A Yes, sir. We had a sketch, a diagram of the immediate area of the scene of the Giambra crime made at the outset of that investigation. I had one of these diagrams in my possession at that time.

Q I show you a diagram and ask you if this is the diagram that you had in your possession.

A Yes, sir.

MR. JOELSON: I would like to mark it for identification.

THE COURT: All right.

(Diagram, marked Exhibit S-21 for identification.)

Q Do you know who prepared this diagram?

A That was prepared by Mr. Charles Geiger, who does all our engineering work—surveying, rather.

Q Now, did you speak to Monks with this diagram in front of both of you?

A Yes, sir.

Q And was anybody else present?

A No, sir.

Q This was when he spoke to you at his request in private, is that right?

A Yes, sir.

Q What was that conversation?

THE COURT: When was that?

Q When was this?

A February 26th at approximately 8:46 p.m.

Q Was this after you were summoned from the luncheonette?

A Yes, sir.

fol. 283 Q What was that conversation?

A I walked into the room and Mr. Arther said to me in the presence of William Monks, "Mr. DeSimone, Willy would like to talk to you alone." I said, "Very well." I closed the door and I turned to him and I said, "Yes, Willy," and he said, "I want to tell you the truth, I will tell you the whole story." I said, "All right, Willy, start right from the beginning." He says, "On that night of November 12th I went to the corner of Park Avenue and East 33d Street and I dug up the weapon. From there I walked to East 32d Street, down Park Avenue to East 31st Street, I then proceeded down East 32d Street to 13th Avenue, up 13th Avenue to the corner of Wall Avenue. I was out looking for a bag." He says, "Then I stood and I saw a woman down about a block away, I saw her coming towards me." I said, "Willy, let me interrupt you just one moment," and I ran out into the outer room, picked up this chart and I came back, and I said, "Willy, first, before you carry on I want to explain something to you. This is Broadway, this is East 33d Street—"

THE COURT: The witness is now demonstrating on S-21 for identification.

A Continuing: "This is East 33d Street, this is Wall Avenue, this is Lexington Avenue. Now, this is the new St. Teresa Church. You recognize that?"

THE COURT: That is indicated on that as a brick
fol. 284 building, is it not?

A Continuing: I said, "This is the playground." He said, "Yeah, I know." He said, "I played basketball in there." I said, "Very well. Do you understand this sketch?" He said, "Yes." I said, "Now, then, Willy, as you are describing it to me, point to the spots that you are designating," so he says, "Well, I stood right here," and he made a pencil mark, there is a little dot there.

Q Would you red pencil encircle this dot?

A He made a dot there indicating the point where he was standing.

Q He made that dot himself?

A Yes, sir.

Q Go ahead.

A Then he said, "She came walking towards me, I took the pipe—" I think he said weapon at that time, perhaps he referred to pipe—well, at any rate, "I took the weapon out of my pants and I started towards her." I said, "Willy, about where was she when you started towards her?" He says, "Right here," and he made another dot, which is approximately an inch and a half to two inches from the first dot.

Q Would you mark a red X mark by that dot, please?

A An X?

Q Yes, alongside of it.

A Yes, sir (witness complying).

MR. EVERS: May we also have the record note when [fol. 285] Detective DeSimone referred to the juvenile as taking the weapon out, he gestured on the right side?

THE COURT: Yes, with his right hand. You mean indicating that he was drawing—

MR. EVERS: Drawing it out on the right side.

THE COURT: That is what the witness said.

THE WITNESS: Then he says, "She turned and started running diagonally towards the nurses' home," and then he said, "I chased her." "Did you catch her?" "Yes." "Where did you catch her?" He indicated around this general area.

I said, "Would you say this is about the spot where you caught up with her?" He said, "Yes." I said, "Willy, will you make an X there or a dot there?" and he made a third dot in the center of the roadway.

Q Would you mark a red Y mark there, please?

A Yes (witness complying). Then I said, "What happened?" If my gestures are going to be watched, I will try to remember it. He said, "I reached over and grabbed —" He said, "I was running sort of alongside of her, I grabbed her left arm where the bag was, she screamed, so I hit her. She didn't fall so I hit her again." He says, "She fell. I saw blood." He says, "I grabbed the bag and started running—"

[fol. 286] MR. RUBENSTEIN: May I ask the witness, was he making these gestures?

THE WITNESS: Not totally. I haven't said he made them, sir. He described that to me. Perhaps I am getting over zealous. He says, "I started running towards 13th Avenue or 14th Avenue and as I started to make the turn I saw people, a crowd in front of the school, so I quickly turned around and ran up 14th Avenue, through the park, went down to the river. I took the wallet out, took the money out, threw the purse and the weapon in the river.

MR. JOELSON: At this point I would like to offer S-21 in evidence.

MR. RUBENSTEIN: No objection.

THE COURT: All right.

(Exhibit S-21, previously marked for identification, received in evidence.)

THE COURT: This is a good point to adjourn until tomorrow morning. Now, so that we will know where we stopped—

* * * *

THE COURT: So we all know where we stopped [fol. 287] with the testimony of Detective DeSimone, he was telling us of the conversation that he had alone with William Monks and he was to the point where the boy had said that he had run through the park, so that is where we will start. * * *

* * * *

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Docket No. J-1359
J-1360

STATE OF NEW JERSEY
IN THE INTEREST OF
WILLIAM MONKS

Paterson, New Jersey

BEFORE: HONORABLE HUGH C. SPERNOW, Judge

TRANSCRIPT OF HEARING—December 5, 1957

APPEARANCES:

CHARLES S. JOELSON, ESQ.,
Deputy Attorney General for the State

J. MORTIMER RUBENSTEIN, ESQ.
and
JAMES P. EVERS, ESQ.,
Attorneys for the Defendant.

[fol. 2] VINCENT DESIMONE, having been previously sworn, testifies as follows:

RECROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q Detective DeSimone, do you know as a matter of fact following the incident involving Miss Giambra there was quite a bit of newspaper publicity concerning it?

A Yes, sir.

* * * *

Q Well, there were descriptions of the scene in the newspaper, was there not?

A It was described as happening at Well Avenue behind St. Theresa's Church. There were pictures of the

spot where Miss Giambra—a picture of the over-all block.

* * * * *

Q Perhaps this will refresh your recollection; showing you the Paterson Evening News of November 13, 1956, there was a picture showing the location where the body was found, wasn't there?

[fol. 3] A Yes, but this is wrong. This arrow points to one of the convent homes.

MR. RUBENSTEIN: May I have this marked for identification, please?

THE COURT: All right.

(The above mentioned newspaper article was received and marked Juvenile's Exhibit J-2 for identification.)

THE COURT: And the observation the witness just made was with reference to J-2?

THE WITNESS: Yes, sir.

Q I show you the Morning Call of Wednesday, November 14, 1956, and ask you if you recall whether that newspaper also had a picture showing Father Lambert standing at the spot where Miss Giambra was found.

A Yes, sir, but north. These photographs are north and south. I mean, the one is looking—they are both looking in a southerly direction.

Q But it shows him standing on the spot where she was found?

A Not necessarily.

Q But in close proximity?

A He is standing in the general area, yes.

MR. RUBENSTEIN: May I have this marked for identification?

(The above mentioned newspaper article was received and marked Juvenile's Exhibit J-3 for identification.)

[fol. 4] Q Detective, you visited the scene of the Giambra matter the morning after, that would be the morning of Tuesday, November 13, didn't you?

A Yes, I arrived the morning of November 13, the early morning.

Q Was there any marks placed on the road where Miss Giambra had fallen?

A Marks?

Q Yes.

A No, but there was quite some blood, and in the blood there were some leaves and some dirt.

Q And there were quite a few people who were coming to see the scene, werent' there?

A Well, they weren't allowed to come to the scene, but they were around there.

Q And they could see quite obviously where this blood marking was in the road?

A They may and may not have, because we kept them down by the nuns' home and 13th Avenue.

Q You kept them away for how long?

A I think we kept that area more or less isolated all day and all the next day until we made a search of the lot behind the church.

Q And when you left the next day the bloodstains were still on the road, weren't they?

A I believe so.

Q In fact, they were there for about a week after [fol. 5] that, weren't they?

A I believe so.

Q So anybody had free access to that spot the day after, which would be the 14th?

A Yes, sir.

Q Anybody coming through that spot could have seen the blood spots?

A Yes.

Q You don't know whether Willie Monks was up at the scene on the 13th, the 14th or the 15th, do you?

A No, I don't know.

Q You would say that if he were up there and walked by he could have seen the blood spots as well as anybody else?

A No doubt.

Q And have known the location where the body was?

A No. doubt.

Q Now, Mr. DeSimone, referring to S-21 for identification, you had placed a red pencil mark, a red circle around where Willie told you in this conversation he had with you where was standing on the corner of 13th Avenue and Wall Avenue. Is that correct?

A It's designated there.

Q A red circle?

A Red circle.

Q And then you placed an X mark where he said he started to approach the woman and she saw him?

A That's the spot where the woman stopped walking in a northerly direction and turned and started running in a southerly direction. That is diagonally across the street.

[fol. 6] THE COURT: Are you referring to S-21?

MR. RUBENSTEIN: S-21 for identification.

THE COURT: I think it's in evidence.

MR. RUBENSTEIN: It's marked for identification.

MR. JOELSON: I offered it.

MR. EVERS: It's in evidence.

Q At that time did he tell you about how far from the corner that was?

A I think I can refresh my recollection.

Q Will you refresh your recollection?

A I think he told us she was fifteen or twenty feet, yes, when she reached a point approximately twenty feet from him he stepped from behind the wall with the weapon in his hand.

Q You tell us that on reconstruction he showed you a spot where he alleged she turned. Is that correct?

A Yes.

Q That reconstruction was on February 27, the next day? I show you S-15 in evidence.

A Yes, sir, that's correct.

Q Would you agree that that is more than fifteen feet, more than twenty feet from the corner or the spot where he indicated he was standing?

A I'd say approximately twenty feet. If you will note with the photograph there are cement blocks, and if [fol. 7] you count from the point here there is eight, and they are about three feet from line to line.

Q That would be twenty-four feet?

A Well, seven times three and another block is twenty-four.

Q And then he told you that she turned and started to run, or started to hurry away?

A She started to run.

Q And did he say that he started to run after her?

A Definitely.

Q And can you tell us what distance there was between the point he indicated on the map, or from the point he indicated on the reconstruction to the point where the body was found?

A It's only a guess.

I'd say forty to fifty feet, but I am only guessing.

THE COURT: Will you proceed, Mr. Rubenstein.

Q Getting away from that for a moment, when you showed him this map, you told us—am I correct in this statement—that you then asked him where he caught up with her?

A Approximately where did he catch up with her.

Q And then you said, "Would this be approximately where you caught up to her?"

And he said, "Yes."

A I said, you make a dot on the spot where you fig- [fol. 8] ure you caught up with her, and he made another pencil dot.

Q Didn't you say on your direct examination, or on examination by Judge Spernow, that you said to him, "Is this approximately where you caught up" and—

A I started off where were you standing as we were going over these steps and he says, "Behind the wall."

And I said, "You put a dot at the spot where you were approximately standing and where she was when she first turned around." I said "Put a spot in that spot," and I said, "Where did you catch up with her?", and I said you put a dot where you first caught up with her.

Q I don't presume that you have the notes that were taken from yesterday.

THE COURT: I remember the testimony, Mr. Rubenstein.

Q Now, Detective, the church building, the school building, there are two entrances to the school building, are there not?

A I believe there are more than two. I believe there is one here, one here and there is another one here, and then you go—you can also get in from the foyer of the church and go in here, so there are exactly four entrances.

Q Do you know which entrances were open that night? Did you make that investigation?

A We found on the night of this that the C. Y. O. [fol. 9] meets. The members were in the habit of meeting here and entering the foyer of the church and going down the corridor or otherwise congregating there.

Q In other words, the first entrance you came to is the 33rd Street entrance, that's between 13th and 14th Avenues, and the other entrance is the entrance leading from 14th Avenue approximately fifty feet east of 33rd Street?

A Yes, sir.

Q Now, you know where Miss Giambra lived, didn't you?

A Yes, sir. To get from her house to East 33rd Street, the entrance on East 33rd Street or the 14th Avenue entrance, she would have to traverse Wall Avenue.

THE COURT: I think if you will reframe that, Mr. Rubenstein. You have to assume how she is going to get there.

Q Whether it be by automobile or by car, if she came from her home, her home is to the—

THE COURT: West.

Q To the west of the building. Is that correct?

A Yes, sir.

Q To get to Wall Avenue from her house she would have had to pass both of the entrances which she normally would have taken. Is that correct?

A Yes, sir.

THE COURT: Not necessarily if she came on a bus. [fol. 10] Suppose she came on a bus to Broadway and she walked down Wall Avenue.

MR. RUBENSTEIN: The bus would have her off at 33rd Street.

THE COURT: Would it?

MR. RUBENSTEIN: Yes.

THE COURT: Can you establish that? Do you know, Mr. DeSimone, where the bus stops are?

MR. RUBENSTEIN: I know as a matter of fact the bus stops are—

THE COURT: Do you know where the bus stops are after 33rd Street?

THE WITNESS: Well, sir, in all fairness I know that in that particular time period that none went up Broadway.

THE COURT: None at all?

THE WITNESS: None. That was checked thoroughly.

Q So she would have gotten off at East 33rd Street if she took a bus?

A Yes.

Q She could have come up East 33rd Street to either entrance, couldn't she?

A Yes, sir.

Q Wall Avenue lies beyond, further in the direction from which she was going?

A Yes, sir.

THE COURT: I think that is about forty feet to the inch. I am judging that because the streets, as they are [fol. 11] indicated on this map, are about an inch wide, aren't they?

MR. RUBENSTEIN: Three-quarters of an inch on Wall Avenue and just about an inch on 13th and 14th.

THE COURT: Why don't you call up Mr. Geiger and ask him what the scale to this sketch is?

Q In accordance to this if she turned here she would have to go completely along the rear of that property?

A Yes.

Q That property runs at least one hundred feet back on Wall Avenue, would you say?

A Yes, sir.

THE COURT: Does it front on 13th?

MR. RUBENSTEIN: The long side is on Wall Avenue. The number may be on 13th Avenue but the long side—

THE COURT: We have a picture here.

MR. RUBENSTEIN: We just have a partial picture. May I withhold that until we get some sort of an idea if this was drawn to scale?

THE COURT: All right.

Q She would have to run on a diagonal completely back from the brick wall, completely along the property of the corner house, right?

A Yes, diagonally, of course.

Q She would have to cover the area completely to the end of that corner house?

A Yes.

[fol. 12] Q In accordance with this, she would have had to traverse most of the property of this building marked 195 Wall Avenue?

A Yes.

Q That property is at least seventy-five feet?

A Yes.

Q So would it be safe in assuming that the distance she ran would be in excess of one hundred feet?

A Possibly.

THE COURT: If possible, Mr. Rubenstein, I would like you to finish without any reservations with the scale, if you can do it. If not, if we continue on Monday I will bring in a scale map.

It may be possible to get Mr. Geiger.

MR. JOELSON: I will find out the scale from Mr. Geiger. He has a record of it.

* * * * *

[fol. 13] Q Directing your attention to the day of the questioning on the 26th, did you have any discussion with Willie concerning how correct or how infallible the results of a lie detector test was?

A That I didn't, no.

Q You never did?

A No.

Q Did you tell him that the lie detector test says that he is lying?

A No, not in them words.

Q What words did you use to indicate that the lie detector test showed such a result?

A I might have said Willie, how do you account for the fact that you were shown five pocketbooks and you got a reaction only on one pocketbook. In other words, five pocketbooks were placed in a box. Mr. Rogers showed him one at a time and on that machine there was a straight line, but when he got to the Weis pocketbook it showed a reaction.

. . . .

[fol. 14] Q Did you at any time tell him the lie detector test said that he wasn't telling the truth in any incident upon which he was tested?

A Not exactly in those words. I made a comparison rather than saying—

. . . .

[fol. 15] Q Did you in one form or another indicate to him that the lie detector test indicated that he was not telling the truth?

A Yes, I would say so.

Q And on how many separate occasions would you say that you so indicated that to him?

. . . .

THE WITNESS: I had to go into certain phases.

. . . .

Q How many different occasions did you so convey the meaning to him?

A Well, it wasn't too many, because I don't want to go into things, sir, in most cases.

Q I didn't ask you that. About how many times would you say, Mr. Desimone?

A I wouldn't say no more than two or three times.

Q You mean to say that during the whole day of [fol. 16] questioning only two or three occasions was inferred to him that the lie detector indicated he was not telling the truth in certain particulars?

A Yes.

him off and on from

until seven o'clock at night?

him until I'd say mid-
I had not said a word to him
except hello. On the 21st I didn't
greet him. On the 26th I
until three o'clock in the after-

three o'clock?

in the afternoon

you were interrogating him,

on and off, were you

only two or three
that in certain particulars
he was not telling the

we made no reference to

EXAMINATION

that the statements that
I think S-5 and S-6, the de-
such as westerly and east-
that he gave his state-
in front of him with direc-

west and east and north

Q Now, I show you S-9 for identification and I ask you if you have ever seen it before.

A Yes, sir.

Q Now, what is it?

A That was a key that was given to me.

* * * *

Q When did this key come into your possession and under what circumstances?

A On November 15 in the early morning Mr. Giambra gave me this key.

Q What is his first name?

A Mr. Stephen Giambra who testified in this very room yesterday.

* * * *

Q Did you ever give this particular key to Mr. Arthur?

A Yes, sir, on February 26th in the early evening I turned this over to Mr. Arthur and then after he returned it to me.

Q That same evening?

A That same evening, and I have had it ever since.

* * * *

[fol. 19]

FURTHER RECROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. DeSimone, you had a sketch with directions marked on it. Was that used at the time the statements were taken?

A Yes, sir.

Q Do you have that sketch?

A Yes, sir.

Q Will you produce it, please?

MR. RUBENSTEIN: May I have that marked for identification, please?

(The above mentioned sketch was received and marked Juvenile's Exhibit J-4 for identification.)

Q. Who prepared this sketch, Mr. DeSimone?
A I did, sir.
Q Was this sketch completely prepared before the interrogation, before the questioning?
A Yes, sir.
Q Now, am I correct in saying on one side it shows the area involved in the Giambra matter, and—
A Yes.
Q —on the other side it shows the area involved in [fol. 20] the Weiss incident? Is that correct?
A Yes, sir.
Q Now, on the side indicated with the Giambra matter there are two X's placed, one at the intersection of 13th Avenue and Wall Avenue and one midway on Wall Avenue between 13th and 14th. Those X's were placed by you. Is that correct?
A Yes, as I recall it I made the X and I wrote the southeast in the same way I put the north here.
Q. You say that X is in his handwriting and not in your handwriting?
A I believe so. Maybe I made those X's.
Q They were made before the statement started, weren't they?
A I would like to explain the entire procedure.
Q I asked you if they were made before the written statements, written confessions were taken?
A The diagrams were made but the X's and the southeast weren't necessarily put in there.
Q Were they or weren't they? I didn't ask you that, Mr. DeSimone, I asked you whether they were or they weren't.
A I don't believe so. I think I had south, west, east and north, 13th Avenue, 14th Avenue, Wall Avenue and 33rd Street on it.
Q You say you were writing those things in as the [fol. 21] questioning was going on?
A I believe it was marked like this. He said, I was standing on the corner of Wall Avenue and 13th Avenue, and I said where, and he said here and perhaps I scribbled it in.

THE COURT: On Exhibit J-4 for identification, what date was that used? You have it marked there.

THE WITNESS: February 27th.

THE COURT: That is the day after. Is that right?

THE WITNESS: What?

THE COURT: The day after.

THE WITNESS: No, this is right after the statement. In other words, the statement ended at one o'clock on February 27th, and I marked it on the top. I made a notation used to take statement 2 27 57, 1:30 a.m. In other words, after we had completed both statements I made this notation on here.

THE COURT: Now, S-21, however, was used by you privately with Monks earlier?

THE WITNESS: This was used much earlier.

THE COURT: S-21 you are referring to?

THE WITNESS: 8:25, and in the interim he talked to Mr. Joelson and then we waited for a stenographer, and for the purposes of clarity I said to him, William, when you describe things in the statement you can't say I ran down this side of the street or something like that, I [fol. 22] said you will have to give directions; so that you understand I will make these rough drafts. They were just sketches, and I pointed out north, south, east and west, and when it came to like the corner, I think the corner of 13th Avenue and 31st Street I put a little notation of the exact corner it was, and as he was telling the story he would look at it.

THE COURT: That is all J-4?

THE WITNESS: And he was referring to that as he testified. First I made it clear before he started asking him questions, I told him you will have to give directions, you can't say this side or this street or that side, so that we understand where you were and what was going on.

Q I will ask you again, were those X marks and the SE and the S placed on before the statement started?

A No, definitely not.

Q It was placed on, you say, during the same time?

A As he was progressing, when he came to a specific spot he put it on.

Q Did you ask him to indicate on the map?

A No, it was all clear to us. We had gone over that time and time again.

Q I want the procedure. You say he had this map in front of him. As you tell us this map was—

[fol. 23] A He didn't have this map in front of him.

Q No, J-4 in front of him. Is that correct?

A Yes.

Q As he was giving the statement?

A Yes.

Q At what point was the X mark indicating at the corner of 13th Avenue and Wall Avenue placed on that sketch?

A When he stated on that corner.

Q When he stated what? That he was—

A That he went up to that corner.

Q And then you placed the X mark on there, or did you ask him to place it on?

A I don't recall exactly. I might have and he might have. I don't recall it.

Q Did you ask him to indicate on that map where he was standing?

A No, I had done that previously. We were in agreement up to that point. He had explained minutely to me. The only thing I was trying to clear up was for the directions so he could clearly describe it on paper. I understood it. He had pointed it out to me, but for someone reading that statement I wanted to make that clear exactly what he was telling me and that is the only reason that was used.

Q If you will just answer my questions.

A I am trying to, sir.

Q In the confession which was placed into evidence, [fol. 24] Is there any reference to this sketch?

A None whatsoever, I don't believe.

Q Isn't it true this sketch and the X's and everything on it was placed and finished before the transcript was taken of the confession?

A This was finished?

THE COURT: Detective, that can be answered yes or no.

THE WITNESS: I don't understand it.
THE COURT: Will you read it, please?

(The last question was read by the Reporter.)

THE WITNESS: No, I wouldn't say that.
THE COURT: You have answered the question. There is no question pending.

Q So it is your recollection that the X's and the other marks were placed on after the confession was finished?

A No.

Q During the confession?

A Yes.

Q By whom?

A That I don't recall exactly. I know the SE and the east side and all directions were placed on there by me, but I don't recall exactly—and the arrow, but I don't recall exactly who placed the X's there.

Q Do you recall whether he was asked in the questioning to place an X any place?

[fol. 25] A No, he wasn't asked that question.

Q Was he asked at any time in that confession to refer to a sketch?

A He was referring to it constantly, and he had that sketch right in front of him.

Q Detective DeSimone, so that we get along better, I didn't ask you that. I asked you whether he was asked in the questioning to refer to a sketch?

A No, not in the statement.

Q Now, I show you the other side of J-1 concerning the Weiss incident. There are two X's indicated on that, one at the intersection of 13th Avenue and 31st Street, an X with SE, and then another X on the westerly side of 31st Street between Broadway and 13th Avenue, and I ask you who placed those X's and the letters SE on the map?

A I don't exactly recall.

Q Can you tell me if that was done before the statement, the stenographic statement was taken of Willie Monks on the Weiss matter?

A With the exception of the X's, yes.

Q Everything was on there?

A Before the statement.

Q The SE?

A I don't believe that was there either. I think the sketch, the streets and the four directions were on there.

Q Well, the SE is in your handwriting, is it not?

[fol. 26] A It's all in my handwriting and the X I am not certain of.

Q Can you tell me when the SE was placed upon that sketch?

A I believe SE was placed there when he referred to the southeast corner, to that corner.

Q Did he ask you to put it on?

A No.

Q Did anybody ask him to indicate on a sketch during that questioning where he stood?

A That was all clear already, sir.

Q I didn't ask you that, Mr. DeSimone.

A I don't recall. I don't believe so.

Q I just want one thing cleared up for the record, Mr. DeSimone. Yesterday in your testimony you stated that Willie said that after this—after he said he hit Miss Giambra that he ran towards the nurses' home. Did you mean nurses' home?

A No, nuns' home.

Q Was it a mistake just in the use of the word?

A No, that is a convent on the corner of 13th Avenue.

Q I thought you may have been mistaken.

A If I said that it was an error.

MR. REBENSTEIN: That's all.

[fol. 27]

FURTHER REDIRECT EXAMINATION

BY MR. JOELSON:

Q Just for the purposes of clarity, after Willie Monks told you about the Giambra assault, did he then repeat that same general story in the presence of others?

A Yes, sir.

Q Before he made the written statement?

A Yes, sir.

Q And who were those others?

A Detective Sergeant Ventimiglia, Probation Officer Jarmolowicz, Detective Joseph Meola, and Mr. Arthur might have been standing in the room. I don't recall exactly.

. . . . .

[fol. 67] THOMAS EDMOND, sworn.

DIRECT EXAMINATION

BY MR. JOELSON:

Q Detective Edmond, by whom are you employed?

A Passaic County Prosecutor's Office.

Q Now, did you ever have occasion to go to the home of William Monks, or his parents at 296 East 31st Street?

A I did.

. . . . .

[fol. 68] Q What date was this?

A Well, this was on February 27, the morning of February 27 about two o'clock I went to the home.

THE COURT: 1957?

THE WITNESS: That's right, but previous to going to the home I had a conversation with William Monks in the Court Stenographer's room just after he finished signing his statements, and in particular I refer to Exhibit No. 6. He was sitting at the table reading it over, making corrections and signing it and I picked up the other copy and read through it. When I came to the part about the leather jacket, Willie at that time had finished signing. I said, "Bill, how about this leather jacket? Where is it now?" He said, "It's at my home."

I said, "Is it there now?"

And he said, "It was there six weeks ago when I left home."

I said, "Just whereabouts in your home is it?"

He said, "It's in the rear hallway of the first [fol. 69] floor."

I said, "How will I be able to identify the jacket when I see it?"

He said, "It's black and the leather inside by the zipper it has a hole in it."

And with that there was an autopsy picture lying face down. It was used previously in the questioning but it hadn't been seen by him. It was the autopsy picture which shows the two blows to the scalp.

Q Are you referring to the picture that is marked S-28 in evidence?

A That's right. It was lying face down on the table. We had not shown that to him so he looked over at the picture and he said, "Can I see how hard I hit her?"

And with that I gave him the picture and he studied the picture and about two o'clock that morning I went up to his family's place of residence on East 31st Street and I talked to Mrs. Monks. As a result of my conversation with her I went into the house and went to the rear hallway and found this jacket hanging on a hook in the rear hallway. I also searched his room on the second floor and also a room he occasionally uses on the third floor.

[fol. 70] Q I show you a jacket and ask you what it is.

A This is the black leather jacket I got from the house of William Monks. I identified it particularly by this big hole here which he likewise identified it by and also by initials here, T. R. E.

MR. JOELSON: I would like to offer this in evidence.

THE COURT: No objection it will be marked.

(The above mentioned jacket was received and marked State's Exhibit S-28 in evidence.)

Q Now, after you obtained this jacket did you talk further with William Monks?

A The following morning, that would be the morning of the 27th about nine o'clock, a.m., he was brought to our office by Probation Officer Jarmolowicz. At that time I showed him the jacket and I said, "Bill, is that the jacket you wore that night?"

And he says, "Yes."

CROSS EXAMINATION

BY MR. RUBENSTEIN

[fol. 71] Q. You had reference to a picture you had. You said we didn't show him that picture. Had you shown him any other pictures?

A. Well, you say, "we". I wasn't with him all the time the questioning was going on. I came in late.

Q. Had you shown him any pictures?

A. No, I had not shown him any pictures whatsoever.

Q. You said you used that picture in the questioning?

A. It was used in the questioning.

Q. How was it used in the questioning, tell me.

A. Well, they were asking about the number of blows struck, and they referred to it.

MR. JOELSON: Were you there during the questioning?

THE WITNESS: I was there during part of the questioning.

MR. JOELSON: What time of the day?

THE COURT: Counsel is examining.

Q. What time was this?

A. This was between 12:30 a.m. and one o'clock in the morning when Detective had taken that statement from him.

Q. How was that picture used in the questioning, Detective Edmond?

A. To the extent that they asked him how many blows he struck, and, of course, they would check the picture when he said two blows.

[fol. 72] Q. Was that used only for them to check?

A. That's right.

Q. But you don't know whether it was shown to him previously?

A. To my knowledge it wasn't shown to him previously.

Q. Not in your presence?

A. That's right.

Q. No pictures were shown to him at all?

A. To my knowledge, no.

Q Wasn't a picture of the officer pointing out the spot shown to him?

A To my knowledge, no.

Q To your knowledge means as far as you know it was not shown to him?

A That's correct.

. . . .

(fol. 76) CHESTER JARMOLOWICZ, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOELSON:

Q Mr. Jarmolowicz, I believe you testified before that you were instructed by Judge Schamach to do what?

A I was instructed by Judge Schamach to be with the boy at all times when the boy was being questioned by the detectives. Might I elaborate just a little further. (fol. 77) I was instructed to be there because I was to see to it that the boy was not abused in any way or taken advantage of or exhausted or placed in a position where he might say something that his physical condition probably would not allow him to say otherwise.

Q Now, do you know when you were given those instructions?

A Yes, I was given those instructions on the 18th of February.

Q Now, on November 18, were you present when Monk was interviewed by the detectives?

A November?

Q I am sorry, February 18th.

A Yes, Detective De Simone and I spoke to him and I believe it was described before he seemed to know the answers to these particular offenses so glibly.

THE COURT: That's a conclusion. Tell us what was said.

THE WITNESS: Well, I believe he described the offenses.

THE COURT: As best you can recall.

THE WITNESS: I remember him saying there was snow on the ground then. I am sorry, I can't elaborate.

Q. What I am trying to get out is not so much what was said but as to whether you were with the boy on February 18th, whenever he was interrogated.

[fol. 78] A. Oh, yes, yes.

Q. Do you know when he was next interrogated or questioned after February 18th?

A. The 21st in the afternoon.

Q. Where was he interrogated?

A. At the Grand Jury anteroom.

Q. Who brought him to the Grand Jury anteroom?

A. I did.

Q. And was he given a lie detector test that day?

A. Yes.

Q. Were you present when he was given the lie detector test?

A. I was not in the testing room. I was in the main room.

Q. And did you turn him over to the people who were to administer the test?

A. That's right.

Q. And after the test was he returned to you immediately?

A. That's right.

Q. And who returned him back to the Children's Shelter?

A. I believe I did.

Q. Now, when was he next questioned by you, right after February 21st?

THE COURT: For what length of time did these things take?

Q. What length of time did the lie detector test take?

A. The whole period that he was in the room, I think [fol. 79] was about thirty or forty minutes.

Q. When was the next time he was interrogated to your knowledge?

A. On the 21st of February. I am sorry, on the 24th.

Q. Now, what time did he leave the Shelter, if you know?

and brought him back
to the anteroom in the
Courthouse.
him there, did you turn
them alone with Mr. Ar-
more than twenty min-
I recall.
the remainder of this day,
incident in which the boy
was questioned.
around four o'clock.
between the morning and four
and Stopford were brought in
time.
and Stopford were ques-
Courtroom.
Detective Ventimiglia
leave the Courthouse
did he leave the Court-
people who took him
presence?
period when the question-
for the hidden item. I believe
Detective Ventimiglia, I believe,
the car to see if they could
had buried.
hour, probably an hour.
brought back to the Courthouse

Q And the rest of the 26th, was he ever questioned outside of your presence?

A No.

Q Well, I call your attention to the subsequent lie detector tests. Were you present at the lie detector tests?

A I wasn't in the room but I was waiting outside that room.

Q And when the boy spoke to Detective DeSimone [fol. 81] alone on the 26th, where were you?

A I was in the other room.

Q By the other room what do you mean?

A In the main Courtroom.

Q And where was he?

A The boy was in the testing room, the anteroom.

Q Did you ever hear anybody yell or holler at the boy?

A Not to my knowledge, no.

Q In your opinion was the boy in your presence abused in any way?

A No.

MR. JOELSON: That's all.

CROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q Mr. Jarmolowicz, you were present at the time the confession was taken, were you not?

A That's right.

Q I show you J-4 for identification, this is the sketch that was used at the time, were you present when that was prepared?

A Yes, I was in the room.

Q To your recollection who prepared it?

A Mr. DeSimone drew these squares and marked the walls in and north and south.

Q To your recollection did Billy Monks make any marks on that sketch?

A My best recollection is that he may have pointed [fol. 82] to a spot at which either he or Mr. DeSimone marked it.

Q Was that during the questioning or before the questioning?

A I think it was during the questioning.

Q Do you remember if there was any reference in the questioning to a sketch?

A No, he was just—he said I am going to show you a sketch of the area and I want you to point out to me where you stood and so forth.

Q During the questioning was he asked, or after the questioning?

A You mean the official questioning?

Q The official questioning.

A This was where?

Q All of these were put on before the final questioning began?

A Oh, no, no. When the questioning—wait a minute, no, this was, I believe, used when the statement was taken in order that he would have a clear understanding as to what he was saying.

Q I am asking you were these sights, the X's and everything, the streets and all the markings on there put on before the questioning, the transcript of the questioning was taken?

A Yes, I believe so.

Q And would that be the same thing concerning this location of the alleged scene of the Weiss incident?

[fol. 83] A Yes.

Q The X's and everything were put on in advance before the questioning?

A In his presence.

Q In his presence but it was all done in advance?

A Yes.

Q And you used this during the questioning?

A That's right.

Q And this was done by Detective DeSimone?

A That's right.

Q Now, Mr. Jarmolowicz, I am going to ask you certain questions. I am going to try to parallel the testimony of Mr. DeSimone. If I am wrong in anything I say will you please tell me so.

A All right.

Q You were present at the time after Mr. DeSimone came out of his private conference with Billy?

A Yes.

Q And did Billy then orally tell the story of the Giambra matter?

A I believe he did, yes.

Q Is this correct that Billy said that he was standing at the southeast corner of 14th Avenue and Wall Avenue?

A Well, I wasn't really listening to the exact testimony because I was just there to see that he was not browbeaten or shouted at.

Q Do you recall whether that was said or not?

[fol. 84] A I don't recall.

Q Do you recall whether it's true whether Billy said the girl was walking up towards him on the easterly side of Wall Avenue?

A I believe I heard him say that, yes.

Q Did you hear him say that when she got to be about twenty feet away from the corner he took the weapon out with his right hand and stepped out and that she saw him and turned around and started to run back towards 14th Avenue?

A Yes, I think I heard that too.

Q Did you hear him say that he then chased her?

A Yes.

Q And did you hear him say that he grabbed her with his left hand, grabbed the purse which she was carrying in her left hand?

A I am not sure. I think he grabbed the purse on her arm.

Q And that she turned towards him?

A That's right.

Q Indicating that she turned from the left to the right towards him?

A I can't say I remember that whether she turned or not. Whether she turned left or right I don't remember. I remember he said he turned to her and he hit her. I believe he said he hit her from the right. She was turning. She may have turned to the left.

* * * *

[fol. 101] MR. JOELSON: If the Court please, subject to the production of Dr. Giambra and Mr. Geiger I am ready to rest the State's case.

THE COURT: No objection. I take it you are following this procedure so that we may proceed and have these other two short witnesses at some other time?

MR. EVERS: I have no objection at all.

Your Honor, reference was made earlier about the rule which would seem to require the Prosecutor to call [fol. 102] the juvenile as a witness. I don't know how to plan to proceed from here on in.

MR. JOELSON: Well, I had not planned to examine the witness. I had planned to cross-examine. However, if the feeling is that I should conduct the examination I would be pleased to do so.

THE COURT: The rule, 6:9-1, where the offender is charged with the charge of the death of a person, the Prosecutor shall be notified and he shall conduct the examination and cross-examination of the offender and witnesses and the offender shall have the right to counsel, and the offender shall have the right to have counsel represent him and take part in the examination. Suppose you start by examining the offender.

I call counsel's attention to the fact that it says the Prosecutor shall conduct the examination and cross-examination of the offender.

WILLIAM MONKS, sworn.

DIRECT EXAMINATION

BY MR. JOELSON:

[fol. 103] Q. William, do you remember where you were on the night of November 12th, 1956?

A. Yes, I was at the corner store on the corner of Twenty-second and Fifteenth Avenue.

Q. What time did you leave your house on November 12th, 1956?

A. About seven o'clock.

Q. And how did you leave your house?

A Walked.

Q Did you go through the door, front door, back door?

A Back door.

Q And where did you walk to?

A Twenty-second Street and Fifteenth Avenue.

Q Did you see anybody in the story?

A Yes.

Q Who did you see?

A The owner and some boys were around there.

Q Do you know the owner's name?

A Just his first name.

Q Do you know these boys' names?

(fol. 104) A No, I couldn't remember them.

Q Had you ever seen them before?

A Yes.

Q Had you been in that store before?

A Yes.

Q Did you tell your lawyers about these people?

A Yes, sir.

Q Now, I show you a statement which is now in evidence, and ask you if that is your signature.

A Yes, sir.

Q Now, do you know what this is?

A Yes, sir.

Q What is it?

A A confession.

Q And did you make this confession?

A I didn't type it.

Q But did you give the answers that are in this confession when asked questions by Mr. Hershman?

A Yes.

Q Are they true answers?

A No.

Q Why did you give them if they are not true?

A I was nervous at the time.

Q Now, I direct your attention to page five of this statement, "When you struck what happened" and after the word "struck" there is a little caret and then the word "her" in handwriting. Did you put that word and (fol. 105) that caret in there?

A Yes, sir.

Q You read this over before you signed it, did you not?

A Yes, sir.

Q And you made this correction?

A Yes, sir.

Q Did anybody tell you to make the correction, or did you make it yourself?

A They told me to make the correction.

Q They told you to make any corrections that you might want to make, but did anybody tell you to put that word "her" in here?

A No.

Q Now, I call your attention to page nine of the statement, on the very last line in answer to a question, the typewriting part says, "Usually when I go out," and after that is written "at night". Is that in your handwriting?

A Yes, sir.

Q Did anybody tell you to put the words "at night" in there?

A I don't remember that.

Q Now, I show you S-5 in evidence, and I ask you if it is signed with your signature.

A Yes.

Q Do you remember signing it?

A Yes.

Q Are the answers given by you in S-5 the truth?

A No, sir.

Q Now, I again ask you why you signed this statement if the facts are not true?

[fol. 106] A Because I was asking too many questions. I was asking questions. I was getting nervous. I was getting mixed up and I was tired, and so I signed it.

Q Are all the handwriting changes on page three of this statement in your handwriting?

A. Yes.

Q And why did you write the word "did" instead of the word "do" on page three in these two places?

THE COURT: Let him read it.

THE WITNESS: It was a mistake.

Q The word "do" was a mistake?
A Yes.
THE COURT: Tell me how it was a mistake.
THE WITNESS: It said, "Where do you run?"
It is supposed to be, "Where did you run?"
Q And when you read this over, you caught this mistake. Is that right?
A Yes.
Q Now, on page eight there is a question that says in typewriting, "You don't whether she had a hat on?" You put the word "know" in there, didn't you?
A Yes.
Q Why did you put that word in there?
A That is a mistake.
Q You caught that mistake, didn't you?
A Yes.
[fol. 107] Q Now, going back to S-6, I call your attention to the question on the bottom of page six, "Will you describe the purse that you took from Giovanna Giambra?"
And your answer, "It was a black purse."
And I further call your attention to your answers indicating that the purse had handles and a big gold emblem. What made you give these answers?
A When I was being questioned, Sergeant DeSimone would say it was a black purse, wasn't it, and I would say yes, and he would say it had handles, and I would say yes and so forth.
Q When was this? When you were being questioned?
A Just before I signed it.
Q Now, this statement also states that after this girl was assaulted by you—
THE COURT: Is this Weiss or Giambra?
MR. JOELSON: Giambra, S-6.
That you ran down 14th Avenue toward 33rd Street, but you saw people so you turned around and started running towards the park. Why did you say that? Was that true?
THE WITNESS: I read that in the papers, that there were some people in the cars down there and in front of the building.

Q Detective DeSimone didn't tell you about that, did [fol. 108] he?

A I don't remember.

Q Now, in the statement you said that you hit the Giambra girl two times. Is that right?

A Yes.

Q Why did you say that?

A Sergeant DeSimone says to me, "You hit her once, right, Willie?" And he says, "She didn't go down and you hit her again, right, Willie?"

And I says, "Yes."

Q When did he say this?

A Before the confession was made.

Q How long before the confession was made did he say that to you?

A About an hour.

Q As a matter of fact, when Mr. Arthur showed you a number of keys, and particularly one key which is marked S-19 in evidence, and which I show you, do you remember sending for Mr. DeSimone at that point?

A No.

Q You don't remember sending for Mr. DeSimone?

A Yes.

MR. RUBENSTEIN: I object. You said first did you send for Mr. DeSimone at that point and now you are changing the question.

Q When did you say at any time that you wanted to see Mr. DeSimone alone?

[fol. 109] A It was in the lie detector room.

Q Now, why did you want to see Mr. DeSimone?

A I couldn't take no more questioning.

Q Why did you ask to see Mr. DeSimone?

A He was asking most of the questions, doing most of the interrogation.

Q And when Mr. DeSimone came after you sent for him, what did you say to him?

A I told him I did it.

Q And then what did he say?

A I think he said tell me how you did it.

Q And what did you do?

A I guess I told him how I did it.

Q Now, that was on February 26th that you told this to Mr. DeSimone, right?

A Yes, sir.

Q And you signed this statement late at night or early in the morning on February 27th, 1957. Is that right?

A That's right.

Q Now, the next day you were taken around in the presence of Mr. Jarmolowicz and you showed investigators where you hit the Giambra woman, isn't that so?

A Yes, sir.

Q Why didn't you, if you didn't do it, why at that time didn't you say to somebody that you didn't do it?

A What?

[fol. 110] Q Why didn't you tell somebody you didn't do it the next day, you had not done it?

A I already told them. I already signed a confession.

Q Well, the next day Mr. Jarmolowicz was along, was he not, when you went around showing the investigators?

A What could he do. I signed a confession.

Q I am not asking you that. I am asking you if the next day you told anybody that your confession was false? Do you remember drawing a sketch on March 1 for Detective DeSimone as to the type of instrument that you had said you hit the Giambra woman with?

A Yes.

Q You did draw this sketch, didn't you?

A Yes.

Q Why did you do that on March 1, if you didn't hit the woman with any instrument?

A Just made it up.

Q Did anybody threaten you on March 1, in any way?

A March 1st?

Q The day you drew this sketch of the instrument for Detective DeSimone.

A No.

Q Do you remember your mother and your sister visiting you on February 28th?

A Yes.

Q Here at the Children's Shelter?
A Yes.
Q Do you remember if your mother asked you wheth-
[fol. 111] er you were guilty of this charge?
A Yes.
Q And what did you do?
A I shook my head.
Q Shook it in the affirmative?
A Nodded.
Q Why did you do that if you weren't guilty?
A Well, what could she do. I already signed the confession.
Q Now, in S-6, the statement, is that from you that you had eaten three times that day? Had you eaten three times that day?
A Yes.
Q And you were questioned whether you were threatened or mistreated by anyone during the entire period of your questioning and your answer was, "No". Is that the truth?
A I was shouted at.
Q Who shouted at you?
A Ventimiglia, or whatever his name is.
Q Well, when you testified here yesterday, you said that you never cried throughout the entire interrogation.
MR. RUBENSTEIN: I object. That is untrue.
MR. JOELSON: Wait a minute. I am not finished. Except when you saw Stopford and Ogg, is that right?
THE WITNESS: Yes, sir.
Q Why did you cry when you saw Stopford and Ogg?
A Because they was supposed to be such good friends
[fol. 112] of mine, and they come in there and they tell them that story. I don't know nothing about that.
Q When you first saw them, did you know whether or not they told any story?
A Saw them where?
Q Stopford and Ogg.
A In the police station?
Q In the Courthouse.
A When I first saw them, no.

Q So then how did you know they still weren't good friends of yours?

A They are making up a lie, making me get in trouble.

Q At the time you first saw them, did you know they had made up a lie?

A No.

Q And yet you just saw them and started crying?

* * * *

[fol. 113] THE WITNESS: They told me I was supposed to have hit this lady, and I didn't know anything about it, and they were supposed to be good friends of mine.

Q Didn't you testify before that when you first saw them you didn't know about them saying that you hit any lady?

A That's right, and then they told me.

Q Now, do you know Richard Tallon?

A Yes.

Q Did you ever have any fights with him?

A No.

Q Were you here today when he testified that you told him in the Children's Shelter—

A Yes.

Q —that you had hit the Giambra woman?

* * * *

THE WITNESS: Yes.

Q Now, do you know any motive he might have against you for telling this story if it wasn't true?

[fol. 114] A Before I signed this here confession, I told them I didn't do it, and after I signed it, I told them I did it.

Q Why did you tell them you did it if you didn't do it?

A I told everybody else I did it.

Q And did you tell him that you hit her once and then she put up her hand and you hit her a second time?

A I don't remember that.

Q I show you S-17 in evidence in which you are pointing to a tree. Do you know what this picture depicts? Do you know what this picture is?

A Yes.
Q What is it?
A East Side Park.
Q What are you pointing to in this picture?
A A low branch.
Q And why are you pointing to this low branch?
A I made that up and I said I fell there.
Q Did anybody tell you to say you fell there?
A No, sir.
Q Why did you make it up?
A I made it up.
Q Now, on March 2, did you tell anyone about throwing a weapon in the vicinity of the soldier's—under a tree shaped like an umbrella?
A March 2nd?
Q Yes.
A I don't remember.
Q Do you remember telling anybody at any time that [fol. 115] you threw a weapon in East Side Park under a tree shaped like an umbrella?
A Yes.
Q Who did you tell that to?
A I think it was Sergeant DeSimone.
Q And he didn't tell you to say that, did he?
A No.
Q Why did you say it?
A I made it up. I don't know how it was done. I just made this up.
Q I call your attention to S-5 in evidence, referring to Naomi Weiss, and the assault upon her.
Now, in this statement you said that you went to a bathroom in an apartment house. Have you ever been in this bathroom in an apartment house?
A Yes.
Q Who were you there with?
A Robert Stopford.
Q Now, in this statement on page four, you describe a weapon that you hit Naomi Weiss with, and you say that it had holes in it and it was shaped like a cigarette pack. Who told you to say that?
A I made that up.

Q Now, you also said that Naomi Weiss was carrying a package that night?

A Yes.

Q Why did you say that?

A One of the detectives told me that she had it.

Q Who told you that?

A I think it was Sergeant Joe Meola.

[fol. 116] Q And did anybody tell you any other contents of the purse of Naomi Weiss?

A One of the detectives did.

Q Which detective was that?

A I don't know which one.

Q Now, when Detective Ventimiglia questioned you about the description of the purse in the Weiss assault, why did you say to him, "You already have the purse, what are you questioning me, questions about it for?"

A I don't remember that.

Q Well, I show you S-4 in evidence and ask you if you have ever seen this purse before.

A I am not sure.

Q You are not sure?

A No.

Q Did Mr. Arther ever show it to you?

A He may have showed it to me. He showed me four pocketbooks. I don't know.

Q And do you deny that you said to Detective Ventimiglia when he asked you to describe the purse in the Weiss assault that he already had the purse?

A Not deny it. I just don't remember.

Q Now, in between the time you made the first statement, S-5, and S-6, were you given anything to drink or to eat?

A In between the statements?

[fol. 117] Q Yes.

A I don't remember, sir.

Q Do you remember getting a glass of milk?

A No.

Q Now, isn't it a fact that for one hour before the time you gave this statement in the Weiss case, S-5 in evidence, that nobody questioned you at all?

A It may have been.

Q Now, did you tell your lawyers the names of the boys who were in the store with you on November 12th, 1956?

A Well, I don't remember exactly who was in the store, but I gave him some names of boys that are usually there.

Q What names did you give him?

A Frankie Kypoff, Bobbie McGee and that's all I remember.

Q Have you discussed this case at all with your brother in Bordentown?

A Yes.

Q Has he advised you as to your testimony?

A No, we didn't never hardly talk about it, you know.

MR. JOELSON: That's all I have at the present time. This completes my examination, Your Honor, but I will have more questions after his own counsel question him.

CROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q From the time you were picked up on the 17th of
(fol. 118) February, Billy, until you went down to Bordentown, where were you kept?

A The first night I was kept at the police station, and I believe the rest of the time I was kept here.

THE COURT: When did he go to Bordentown?

Q About when did you go to Bordentown?

A The 20th.

Q But you didn't see your brother from the time you had been picked up until the time you went to Bordentown, did you?

A No.

Q Before you had gone to Bordentown you repudiated the confession, didn't you?

A Yes.

• • • •

[fol. 121] Q Billy, did you hit Naomi Weiss?
A No.
Q Did you grab a pocketbook from Naomi Weiss?
A No.
Q Did you hit Giovanna Giambra?
A No.
Q Did you have anything to do with the assault upon her or the death of Giovanna Giambra?
A No, I didn't know nothing about it.
Q Did you have anything to do with the assault upon Naomi Weiss?
A No, sir.
Q At the time you told Detective DeSimone that you [fol. 122] had something to do with the Giambra matter, were you in any way afraid of him?
A I don't think I remember that, sir. I don't remember that.
You mean that heart to heart talk like?
Q Well, did you have a heart to heart talk with Detective DeSimone?
A Yes.
Q And about when was that?
A Around about five o'clock.
Q Is that the time you told Detective DeSimone that you had done the Giambra thing?
A No, wait a minute. I will change that. It was about four o'clock.
Q Is that the time you told Detective DeSimone that you had done the Giambra thing?
A No, sir.
Q When did you first tell Detective DeSimone you had done the Giambra thing?
A About five o'clock.
Q And where did you tell him?
A I think it's the anteroom.
Q What had you been doing in the anteroom just before that?
A Taking a lie detector test.
Q At the time you told Detective DeSimone that, were you afraid of anything?

A I was nervous.
Q Why were you nervous?
A Mr. Arther was asking me a lot of questions, and [fol. 123] I was getting all mixed up.
Q Is that the only thing you were nervous about?
A And being suspicion of it, being suspicious of it.
Q Is that your leather jacket, Billy?
A Yes.
Q Do you see many boys, many men wearing leather jackets like that?
A Yes.
Q Are they quite popular as far as you know?
A Yes.
Q Billy, do you know where you were on February 24, 1956, the night of the Weiss assault?
A No, I couldn't remember that.
Q Have you been in East Side Park quite often?
A Yes, sir.
Q You are pretty familiar with East Side Park?
A Yes.

• • • •

[fol. 124] [December 10, 1957]

• • • •

[fol. 129] WILLIAM MONKS, having been previously sworn according to law, is recalled and testified as follows:

CROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q Billy, after the conclusion of the taking of the statement which was S-6 in evidence which would be the statement concerning the Giambra matter, did you ask to see a picture of Vonnie Giambra, a picture that they had?
A Yes.
Q Did you say you wanted to see how hard you hit her?
A No.

Q What did you say?
A I just asked him if I may see the picture.

. . . . .

[fol. 130] CROSS-EXAMINATION

BY MR. JOELSON:

Q Now, William, after your confession on the Weiss and Giambra matters on February 26th, 1957, when was the first time after that that you recanted your confession, that you went back on your confession?
A When I got a visit from my lawyer.
Q When you got a visit from your lawyer?
A Yes.
Q When was that?
A I don't know.
Q Wasn't it around the middle of March, around March 20th?
A About that.
Q Now—
MR. EVERS: If your Honor please, I think the March 20th date was the date that the matter was first set down for hearing by Judge Schaminch and there was a formal statement made on the record on that date that the boy had recanted his confession, but I don't know whether Mr. Joelson is trying to derive whether or not the recanting actually took place that day or previously. I think the date is—
THE COURT: I think Mr. Joelson can conduct the examination as to that element of time the way he wants to. I think your statement is probably helpful at the [fol. 131] moment.
Q At any rate, William, the first time you recanted was when the Court assigned counsel to you and you spoke to your counsel, is that right?
A Yes.
Q Now, why did you wait until that time? Why didn't you tell your mother and sister on February 28th?
THE COURT: One question at a time. You have asked a question and it wasn't answered.

Q Why did you wait such a long time?
A I don't know.
Q You will have to speak up. I don't know what you said.
A I don't remember.

• • • •

Q Now, on the night of November 12 prior to the time you went out around seven o'clock, did your father lock you in your room?
[fol. 132] A I don't remember that.
Q Well, your room was on what floor of your house?
A Second floor.
Q You don't remember whether or not your father locked you in your room on November 12, 1965, is that right?
A Yes.
Q But you do remember that you were in the confectionery store on the corner of East 22nd Street and 15th Avenue on that night, don't you?
A Yes.
Q How often did your father lock you in your room?
A When I did something wrong.
Q How often were you in the candy store on East 22nd Street and 15th Avenue?
A Very often.
Q And you don't remember whether or not your father locked you in your room that evening, is that right?
A I can't remember.
Q But you do surely remember that you were in the candy store on East 22nd Street and 15th Avenue?
A Yes.
Q Now, immediately prior to February 17, 1957, that is the time you were first placed in custody, where were you living?
A 421 Ellison Street.
Q That is not your parents' home, is it?
A No.
[fol. 133] Q Whose home is that?
A Mr. and Mrs. Rammage.
Q How long had you lived there?

• • • •

THE WITNESS: About a month and a half.

Q And for the two or three weeks prior to the time you went to live with Mr. and Mrs. Rammage on Ellison Street, where did you live?

A Harry Ogg's cellar.

Q And during that two or three week period did you ever sleep in parked cars during the night?

A Yes.

Q How many times would you sleep in parked cars during the night?

• • • • •

THE WITNESS: Two nights.

Q During that time that you were either sleeping in Ogg's cellar or in parked cars, what time did you usually go to sleep?

• • • • •

[fol. 134] THE WITNESS: Around ten o'clock, between nine and ten o'clock.

Q The night you slept in parked cars you went to sleep at nine o'clock or ten o'clock?

A Nine or ten.

• • • • •

Q When you slept in the parked cars what time did you go to sleep?

A What time did I fall asleep?

Q What time did you go to sleep? What time did you go to the car for the purpose of sleeping?

A About nine, nine-thirty.

Q And did you sleep the whole night through in the parked car?

A No.

Q What time would you leave the car?

A I would never leave it. I just didn't go to sleep. It was cold. It was in the wintertime.

Q And when you slept in Ogg's cellar what did you sleep on?

A A sleeping bag. It is on—

[fol. 135] Q Was it on the floor?

A Yeah, on a sleeping bag.

• • • • •

Q At the time you were either living in Ogg's cellar or sleeping in parked cars, where did you eat your meals?

A At Harry Ogg's house.

Q And at the time you were living with the Rammages where did you eat your meals?

A At that house.

* * * *

[fol. 136] Q Did you eat three meals a day in Ogg's house from the time you left your home until the time you went to Rammages' home?

A Not all the time.

Q Where did you eat when you didn't eat in the Oggs' house?

A Stopford's house.

Q Did you ever skip meals?

A Yes.

Q Now, I am going to show you S-5, which is the statement involving the Weiss assault. Why did you say in this statement, William, that you hid behind a tree on the night of the Weiss assault?

A I don't know. I heard it from one of the detectives that someone was over there waiting for the lady.

Q Did anyone tell you that anybody hid behind a tree?

A Maybe not in them words but they meant that.

Q Now, why did you say you cut across the street from the tree to where Naomi Weiss was?

A The detective also told me that.

Q Which detective told you that?

A I don't remember them.

Q Now, what did they tell you?

A They told me that; that you was hiding behind this tree and that you cut diagonally across the road and you hit her.

* * * *

[fol. 137] Q Did they tell you that you were hiding behind a tree and that you cut across the street before you confessed to the Weiss assault?

A Yes.

Q Are you sure of that?

A Yes.
Q But you don't remember which detective?
A No.
Q Did you read anything in the newspapers about the Weiss assault?
A No.
Q How did you know the height of Naomi Weiss?
A I just guessed at it.
Q Nobody told you her height, did they?
A I don't think so.
Q How did you know the way she was dressed?
A They told me that too.
Q Now, do you recall when Detective Ventimiglia asked you to describe the Weiss purse, do you recall saying to him that you already have the Weiss purse?
A I don't remember that.
Q Well, do you remember conversations with Detective Ventimiglia about a purse?
A No.
Q He never asked you to identify a purse or to [fol. 138] describe a purse?
A The lie detector man, he did.
Q How many purses did he show you?
A I think there was four.
Q And do you deny that you told Detective Ventimiglia when he asked you to describe the purse that the police already had the purse?
A I don't remember that.
Q Now, I want to go to the statement on the Giambra matter. You described Vonnie Giambra's height in this statement. How did you know the height of Vonnie Giambra?
A I probably guessed as it.
Q You guessed that too?
A Probably.
Q Now, you also said in this statement that after you hit Vonnie Giambra you ran and you ran down towards the St. Theresa's School but that you saw some people in front of the school and therefore you retraced your steps back. How do you know there were people around the school?

A I read that in the papers.
Q Do you recall which paper?
A No.
Q Well, I would like you to examine the papers that are in evidence on the Giambra matter and show me where this is contained in any of these papers.
A Do you want me to read it?
Q Yes, read it carefully.
[fol. 139] MR. RUBENSTEIN: For the purpose of the record—
THE COURT: Can we separate the Giambra matter from the Weiss matter to save time?
MR. RUBENSTEIN: All these papers deal with the Giambra matter. It also appears in the record that he read it in the Daily News and Newark Evening News. None of them are here because I did not obtain them. These are the only articles which I had available.
THE COURT: Let the record note that the witness has been examining the statements for about twenty minutes.

(There was a short recess taken.)

Q Now, William, you have read these papers that have been marked into evidence. Have you been able to find any reference in these papers to any people being gathered in front of St. Theresa's Church at the time you stated in your statement?
A No.
Q Now, William, you say you read in detail about the facts in the Giambra case in the newspapers, is that right?
A Yes.
Q Why did you read the papers about this case in such detail?
A It was such a big thing, you know.
Q Well, do you remember a Bucanus case in Passaic that was in the local papers?
A No.
[fol. 140] Q You never heard of that case?
A I never heard of that name before.

Q Do you remember a case where a person by the name of Force was killed?

A No.

* * * *

[fol. 141] Q Do you remember reading about a Zak case in the City of Paterson?

* * * *

Q What was the answer?

A No.

Q Now, you stated when you testified last week that you had a heart to heart talk with Detective DeSimone on [fol. 142] February 26th, is that right?

A Yes.

Q And do you remember about what time that was?

A Four, maybe four-thirty.

Q Now, after you had that heart to heart talk did you sit alone for any length of time without anybody questioning you?

A Yes, sir.

Q For about how long?

A Not too long.

Q Well, would it be more than half a hour?

A No.

Q Would it be about a half an hour?

A No, about fifteen minutes maybe at the most.

Q And isn't it so that you asked to talk to Detective DeSimone at a time when you were shown a certain key by Mr. Arther, the lie detector operator?

A Not at that time.

Q When did you ask to see Mr. DeSimone?

A I asked in the test, I think it was.

Q After the test?

A I think so.

Q You don't remember anything about a key during that test?

A Could have been. I don't know.

Q Now, at any rate you did confess to Mr. DeSimone alone, is that right?

A Yes.

Q Now, after you confessed to Mr. DeSimone alone,

[fol. 143] you then had a sandwich and a drink and pie, is that right?

A Yes.

Q And after that didn't you repeat your confession not only to Detective DeSimone but to Ventimiglia and in the presence of Mr. Jarmolowicz orally?

A Yes.

Q And isn't it a fact that from that time, from the time that you completed your oral statement to these three men until the time you were questioned in the presence of Mr. Weberman, who was the man who took the statement down on a typewriter, that about an hour and a half elapsed in which you ate and were not questioned in any way? You did not eat, I am sorry. In which you were questioned in any way.

A From what time to what time?

Q From the time you orally repeated your confession in the presence of Mr. Ventimiglia and Mr. Jarmolowicz until the time that the statement was taken down on a typewriter, didn't a period of an hour or more elapse in which you were not questioned in any way?

A Could have been.

Q What is that?

A Could have been.

Q Now, William, I am going to show you pages. Well, I will show you page seven of the transcript of your [fol. 144] testimony here last week in which I asked you why you said you hit the Giambra girl two times and your answer was that Sergeant DeSimone said to you you hit her once, right, Willie, and he says she didn't go down and you hit her again, right, Willie.

MR. RUBENSTEIN: Will you finish the answer, please.

Q And I says, "Yes."

Now, when I asked you when he said this you said before the confession was made. Now, will you tell us exactly when this conversation between you and Detective DeSimone took place?

A I don't know. It could have beeen when I was telling him orally.

Q After your heart to heart talk?

A Yeah.

Q Well, the first thing that you said to him when you confessed orally was what as closely as you can remember?

A I don't remember.

Q Well, did you say I did it, I want to confess, or just what was your opening remark to him when he came in at your request?

A I don't know. I don't remember nothing about that.

Q Why did you send for him?

A I just couldn't take no more questioning.

Q What did you say to him when he first came into [fol. 145] the room?

A I don't remember that.

Q Now, in your statement as to the Giambra matter you said that you used a pipe and that you got a pipe where men were working some place in 15th Avenue. Did anybody tell you to say that?

A No.

Q Why did you say it?

A I just made it up.

Q And did you ever pick up a pipe on 15th Avenue as you said?

A No.

Q And why did you say that after the Weiss assault that you buried this pipe on 31st Street and Park Avenue? Did anybody tell you to say that?

A No.

Q Did you just make that up?

A Yes.

Q Did you ever bury a pipe?

A No.

Q Now, do you remember the morning of February 27th when you went around with the police and reconstructed these assaults which you had confessed to?

A Yes, sir.

Q Do you remember saying to DeSimone on that day that you were glad you got it off your chest?

A No.

Q Now, didn't you tell DeSimone maybe four or five days after your confession that your statement was un-[fol. 146] true as to your having thrown the pipe in the river, that you really had dropped it in East Side Park on the night of the Giambra assault?

A Yes.

Q Why did you tell him that?

A Where did I say I hid the pipe first?

Q Well, you first said that you threw the pipe in the river, isn't that so?

A Yes.

Q And that was on February 26th that you said that, right?

A Yes.

Q Now, four or five days later why did you tell Mr. DeSimone that you really didn't throw the pipe in the river but that you had dropped it in East Side Park on the night of November 12, 1956?

A I think they were looking for the pipe and they couldn't find it so I made up another story.

Q Didn't you tell him that you went back to the park a day or two after November 12, 1956, because you remembered that the police were looking for a weapon and that you took the pipe that you had hid under a tree and threw it in a garbage can?

A Yeah.

Q Now, was that statement the truth?

A No.

. . . .

[fol. 147] Q Do you remember a conversation with Detective DeSimone and Edmond around March 2nd, 1957, after the skin divers had gone down in the Passaic River looking for the Giambra purse?

A Yes.

Q And what did they say to you?

A They says they didn't find the pipe or the pocketbook?

Q And what did you say about the pocketbook?

A I think I says, "You should find it."

Q Why did you tell them that?

A I just made it up.

Q Now, on March 1, 1957, do you remember having a conversation with DeSimone about the type of instrument that you said you had hit the Weiss and the Giambra women with?

A Yes.

Q Do you remember him showing you various types of instruments?

A Yeah.

Q Do you remember him showing you this instrument that I have in my hand?

A Yes.

MR. JOELSON: I would like to mark this merely for [fol. 148] identification.

THE COURT: Let it be marked.

(The above mentioned instrument was received and marked State's Exhibit S-29 for identification.)

Q Now, did Detective DeSimone show you this bar which is marked S-29 for identification and ask you if that was the weapon you used?

A Yes.

Q And what did you say?

A No.

Q And did he then ask you to describe the weapon that you used?

A Yes.

Q How did you describe it?

A I says it was about two feet long and it was shaped like a cigarette pack and it had all oval shaped holes in it.

Q Now, did you ever see a weapon such as you have just described?

A Yes.

Q Where did you see such a weapon?

A Some men were working on this here road on 15th Avenue and 27th Street.

Q When were they working on this?

A About the early part of February, 1957.

Q And did you take such an instrument at that time?

A No.

Q Did you ever pick it up and hold it in your hand?
A Yes.
Q Why?
A Just looking at it.

• • • •

[fol. 149] Q Let's go to your conversation with Richard Tallon. Wasn't your conversation with Richard Tallon here in the Children's Shelter prior to the time that you made a confession in this case?

• • • • •

Q Tell us about the first conversation that you had with Richard Tallon concerning either the Giambra or the Weiss case.
A He asked me if I hit her and I says, "Yes."
Q When was this?
A After I signed the confession.
Q Are you sure it wasn't after your first lie detector test but before you signed the confession?
A I don't know.
Q Could it have been before you signed the confession?
A No.
Q Well, did you have two conversations with Richard Tallon?
A Yes.
Q What was the second one?
[fol. 150] A After I recanted the confession he asked me and I says, "No, I didn't do it."
Q Are you sure he was still here when you recanted the confession?
A I think so.

• • • •

Q Now, you testified at the last hearing that there were occasions when you went into a rooming house on 31st Street and 15th Avenue. When you went into this house how did you get into the house?
A By the rear door.
Q Did you have a key to the rear door?
A No, it was always open.

Q And now I want you to go back in your mind to your very first conference with DeSimone and Ventimiglia on February 18, 1957, that's the very first time they spoke to you here in the Children's Shelter. Do you remember that day?

A Yes.

Q Now, do you remember them asking you if you knew about any purse snatchings on various streets?

A Might have.

Q And didn't they go street by street? They started [fol. 151] with 25th Street, 26th Street, 27th Street and so on?

A I think so.

Q And when they asked you if you knew anything about a purse snatching on 31st Street, what did you say?

A I don't remember that.

Q Didn't you say I didn't hit that woman?

A I don't think so.

Q Don't you remember saying that and they asking you which woman and you said the woman that was hit about a year ago?

A It might have been. I don't remember that.

Q And don't you remember saying to them it was snowing that night?

A No.

Q You don't remember that at all?

A There was some questioning. I don't remember.

Q This was the very first time you ever saw Detective DeSimone, wasn't it?

A Yes, I guess so.

Q And he had not questioned you very much that day had he?

A I guess not.

Q All right. Now, I want you to search your memory and tell the Judge just what you said as close as you can remember when East 31st Street was mentioned.

A I don't remember that.

Q You don't remember that?

A No.

Q Well, on February 18, 1957, did you know anything [fol. 152] about the Weiss assault at all?

A No.

Q You didn't know anything about it?

A Except the first night they were asking me questions about that.

Q What first night?

A The first night I was picked up.

Q You never read about it in the newspapers?

A No.

Q You never discussed it with Ogg or Stopford?

A No.

Q You never looked at a newspaper in the candy store and discussed that Weiss affair with Ogg and Stopford?

A No.

Q Now, I want you to recall that same conversation with DeSimone and Ventimiglia on February 18, 1957, when they mentioned Wall Avenue. What did you say when they mentioned that?

A I don't remember that.

Q You don't remember anything about that at all?

A No.

Q You don't remember saying, "I didn't hit that woman"?

A No.

Q And when they asked you which woman you don't remember saying, "The woman that was hit on November 12, 1956"?

A No.

[fol. 153] Q Now, at your testimony here last week you stated on direct examination that you were with some boys in that candy store on East 22nd Street and 15th Avenue and on direct examination on page three you said you couldn't remember their names and then on page sixteen you said in answer to my question did you tell your lawyer the names of the boys who were in the store with you on November 12, 1956, and your answer, "ANSWER: Well, I don't remember exactly who

was in the store but I gave him some names of boys that are usually there."

And then the question, "QUESTION: What names did you give him?"

And your answer, "ANSWER: Frankie Kypoff, Bobbie McGee and that's all I remember."

Isn't it a fact that previously you gave as alibi witnesses to your lawyer names of Frank Dovidio and—

THE COURT: Can't you reframe this question?

MR. JOELSON: Sir, I want to ask him—

THE COURT: How do you know he gave these names to his lawyer?

MR. RUBENSTEIN: I think for the purpose of the record I might say that the names were given in the Prosecutor's Office and in the presence of the Prosecutor and myself. There is no question of privacy involved, sir.

Q Didn't you say on March 20, 1957, in the presence [fol. 154] of Mr. DeSimone and your lawyers that you were in the store on 15th Avenue and East 22nd Street on November 12, 1956, with Frank Dovidio, Warner Ottlinghouse and Billy Goodwin?

A Yes.

Q And why did you say last week that you gave your lawyer the names of Frankie Kypoff and Bobbie McGee?

A I don't remember who was there, but those boys that I named are usually there.

Q Well, I asked you what names you gave as boys who were in that store on November 12, 1956, and you said Frankie Kypoff and Bobbie McGee and that's all I remember. Now, do you remember at this time the names of the boys who were in that store on November 12th, 1956?

A I don't remember for sure who was in the store but them boys are usually in the store at nighttime.

Q Now, I want you to trace your steps on the night of November 12, 1956, from the time you left the house around seven o'clock until the time you went home, and I want to begin by asking you if it isn't true that you were locked in your room and that you went out of a window of your room on that night?

A What was that again?

Q On November 12, 1956, when you left your house around seven p.m., didn't you leave by way of a window in your room?

A No.

[fol. 155] Q You didn't climb out of a window and jump to a porch roof and then climb down and get into the street?

A November 12th?

Q Yes.

A I wasn't sleeping in that room.

Q Well, were you locked in any room on that night?

A I don't think so. You mean the door locked?

Q Yes.

A No. I was maybe sent to my room but I wasn't locked in there.

Q And you just walked out of the back door, not out of a window?

A No, not out of a window.

Q Now, what happened when you left the house? Where did you go?

A To the corner of 31st Street and 15th Avenue and then up to 26th Street.

Q Go ahead. And then you went up to 22nd Street to the store?

A Yes.

Q Now, how long does it take, or did it take you that night to walk from your house to that candy store?

A About seven minutes.

Q What time did you leave your house?

A About seven.

Q So you got there about seven minutes after seven in the candy store?

A Yes.

Q How long were you there?

A Until about nine.

[fol. 156] Q You were in that same candy store for about two hours?

A Yes.

Q And yet you don't remember anybody who was in there with you?

A No. The boys, they come and go, you know. I don't know exactly who was in there.

Q Did you ever stay in these two hours before on another night?

A Yes.

Q What did you do there for two hours?

A Talked, watched the boys play the pinball machine.

Q What boys did you talk to?

A Anybody that was there, any of my boy friends that were there.

* * * *

Q Who did you watch play the pinball machine?

A Billy Goodwin, my brother, Warner Ottlinghouse.

Q Your brothers were there?

A Brothers? I don't know. Maybe my brother was. Bobbie wasn't there that night, no, but that's who I usually watched.

[fol. 157] Q I am talking about this night.

A Oh, I don't know.

Q You were there for two hours and you don't know who you saw play a pinball machine or who you talked to, is that correct?

A It could have been anyone of the boys I mentioned. I don't remember.

Q When did you next go back to that candy store after November 12th?

A The next day, I think it was.

Q What time the next day?

A In the morning. About eight o'clock, 8:30.

Q Weren't you in school?

A No, I didn't go to school until about nine o'clock.

Q Well, you went to School No. 22, didn't you, at that time?

A Yes.

Q How could you have gone to that candy store at 8:30 and been in School 22 at nine o'clock?

A The bus comes about twenty-five minutes to nine because I usually have a bite.

Q Just a minute. How did you go to school that day, by bus or by bike on November 13th?

A I rode my bike to that store, stayed there for a few minutes and then I go and ride the bike to Chuck Ramsey's house. I park it there and then I walk to Broadway and some other street where the library is [fol. 158] there and I catch the bus.

Q Did you do it on November 13th?

A I do it every day.

Q Did you do it on November 13th?

A Yes.

Q Are you sure of that?

A Pretty sure.

Q In other words, after the night of November 12th when you were in the candy store you went to school the next day, November 13, 1956?

A I think so.

* * * *

[fol. 160] REVEREND JAMES BOYSELL, sworn.

DIRECT EXAMINATION

BY MR. EVERS:

Q Reverend Boysell, would you state your occupation, please?

A Clergyman.

Q And of what church are you the rector or pastor?

A The East Side Presbyterian.

Q In Paterson?

A That's correct.

Q Do you know the juvenile, William Monks?

A I met him first here when he was detained in the —one of my trustees and the previous director here, I believe his name is Orr.

Q Can you tell us approximately when that was, Reverend?

A That was on the day just preceding the lie detector test. I believe he was taken down as soon as our conference was over.

Q And do you recall what day of the week that was?

A I do not.

* * * *

[fol. 161] Q Now, after this first meeting to which you have testified, did you have any subsequent meetings with the boy?

A Yes, I did, on two occasions. I am trying to recall now two cases. I believe I was here at the request of Judge Schamach trying to do the best I could to find out what the situation was.

Q Now, do you know whether either or both of those last two conversations that you had with him took place before or after he issued the statements in which he admitted implication in these two offenses?

A I am not positive. I believe one of them may have occurred before the statement and one after the statement.

Q Are you sure that at least one took place after the statement?

A After the statement, yes.

Q Would you relate to the Court the circumstances [fol. 162] under which you first came here to confer with the boy?

A At the request of Judge Schamach.

Q The first conference?

A That's right.

Q That's the one at which you were accompanied by one of the trustees of your church, is that right?

A That's right.

Q Now, during the course of these various conversations with the boy, did you discuss with him the Weiss matter?

A Only indirectly. I believe I was concerned with the pocketbook that he had stolen or taken from one of our parishioners. He told me where he had buried it. I went there with one of the deacons who was with me, a Mr. Reed. I was accompanied on my visits by either one or the other of these men, and we found what he buried in the way of the pocketbook.

Q When you refer to those incidents involving a pocketbook, you don't have reference to either the Weiss or the Giambra matters, do you?

A No, that was entirely another matter.

Q Did you at any time discuss with the boy, at any time during these various conferences you had with him discuss the Giambra matter with him?

A Yes, I did.

Q Now, did he at any time admit to you complicity in [fol. 163] either Weiss or Giambra?

A No, he did not.

Q Did you ever question him regarding his having admitted doing these two offenses?

MR. JOELSON: Unless we can fix a date I would have to object to this, Your Honor.

THE WITNESS: If you would permit me as a friend of the Court, I would rather just say my pastoral relations with this boy, although he is not a member of our church, one of his sisters is and through that interest and Judge Schamach's request I tried to be of some help to him. In our conversations there was no admission to the case now before you. I would hesitate to share any pastoral conferences, but there were none in this case that would suggest his having had more than a story to tell which he made more and more of.

Q Did you inquire of the boy as to why he had confessed to these two offenses?

A Yes, I did.

Q Will you tell his Honor the reasons that he advanced, or rather what he said?

A I asked Monks in a rather private conference if he wouldn't tell me whether this was true or not and he said it isn't, he didn't realize how much trouble he was getting into; it was a story and he had to make the story good. That's all I could ever get out of the boy.

MR. EVERS: Thank you, Reverend, that's all.

[fol. 164] CROSS-EXAMINATION

BY MR. JOELSON:

Q Reverend Boysell, I'd like, if possible, to fix dates for these conversations. You say the first conversation was before?

THE COURT: Let me suggest this: Did you see him altogether on three occasions, Reverend?

THE WITNESS: I believe that's correct. I would have to refer to notes which I have not had time to do since being called here. I saw him the first time in the presence of Mr. Orr and Mr. Swab in Mr. Orr's office. At that time on the day which I believe he was being called down, at that particular time for a lie detecting test. On two other occasions I think I saw him. I couldn't fix those dates without referring to my notes. Both of them were here. I have not seen this chap outside of this building.

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[fol. 165] Q And is it your testimony that Monks said to you that if he had known how serious the offense was that he would not have confessed?

A That's all I could get from this boy. I asked him repeatedly why he had confessed and he said well, I started with a story and I had to make it good. That's about all I can contribute to it.

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WILLIAM MONKS, having been previously sworn according to law, is recalled and testified as follows:

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[fol. 166] BY THE COURT:

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[fol. 167] Q Well, do you remember your father saying to you that around the middle of November the police had to be to the house, William.

Q Do you remember him saying that the patrolman had come and said where was William the night that the Giambra matter happened?

A Yes.

Q Do you remember that?

A Yes.

Q Do you remember your father saying to you I told them that you were supposed to be in your room but that [fol. 168] you had gone out?

A Yes.

Q Your father told you that?

A Yes.

Q Now, how many days after the Giambra affair was that, was that the next morning or the morning after or what?

Q Let's see what day of the week the 12th was on.

MR. JOELSON: Monday.

Q Monday is the 12th. Tuesday is the 13th, Wednesday is the 14th, Thursday is the 15th. I think the officer said he saw your father on the 15th. Is that your recollection of Officer Mulhall's testimony?

MR. JOELSON: That's right.

Q Was it that Thursday night then that you say you spoke to your father?

A Yes. I was picked up from the police. I was brought down to the police station, that was about four o'clock and I come home about six, maybe six-thirty.

Q And you went down to the police station then?

A No, from about four to about six-thirty I was down the police station.

Q Did your father go down with you?

A No.

Q Was your father home when you went home?

A Yes.

[fol. 168] Q Well, what did—what your father said was true, was it not, that he had told you to stay in your room and you had gone out?

A I think so.

Q On that Monday night?

A Yes.

* * * * *

[fol. 171] Q Now, when you went down to the police station on this Thursday, do you remember who the police were that you talked to?

A No.

Q Were there any other boys down there at that time?

A No.

Q Do you remember the detective?

A No.

Q Where did you go? Right in the police station or in the Detective Bureau?

A On the second floor of the police station.

Q How long were you questioned then?
A About an hour.
Q Were you all alone? I mean there were no other boys there?
A No.
Q How many detectives or policemen?
A Maybe one or two.
Q Did you go to the Youth Guidance Bureau at all that day?
A No.
Q Do you know who they are, the Youth Guidance Bureau?
A City Hall Annex?
Q Yes.
A No, I don't think so, no.

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[fol. 174] Q Now, do you remember on the 13th of November that your father and mother were talking to you about your behavior?
A I don't remember exactly but it could have been.
Q Do you remember that you were on probation and they were discussing with you your conduct while you were on probation?
A Yes, sir.
Q Do you remember that they said to you that they didn't like to do it but they were going to talk to the probation officer about your conduct?
A Yes.
Q What did you say to them?
A Nothing.
Q This picture is S-26. Is that the one that you saw from Detective Ventimiglia?
A Yes.
Q You did ask to see that picture, didn't you?
A Yes.
Q You asked the detective? Had it been around the room while you were being questioned?
A This picture? That was right after I signed the statement.

• • • •

Q What I meant was why did you know that you [fol. 175] would be interested in seeing that picture? Had there been a great many pictures around the room?

A Somebody was showing that to somebody across the table and I asked to see it.

Q You knew when you asked to see if that it was the picture of the young lady, didn't you?

A Yes.

Q Now, you remember when your mother and sister came up here and Mr. Orr was here, you remember when they visited you that day?

A Yes.

Q And your mother said William, did you do this terrible thing, and did you shake your head yes?

A Yes.

Q Now, you remember Mr. Jarmolowicz, don't you?

A Yes.

Q Was he your probation officer?

A No.

Q Who was your probation officer?

A I forget his name. I had two of them.

Q William, you knew Mr. Jarmolowicz who is sitting here on my left?

A Yes.

Q And on the 18th of February when you were in the Shelter here, Mr. Jarmolowicz was here when Detective DeSimone and the other officers talked to you, was he not?

A Yes.

[fol. 176] Q Did you know he was a probation officer?

A Yes.

Q And you know these probation officers try to help the probationers, do you not?

A Yes.

Q Did you know that Judge Schamach had assigned Mr. Jarmolowicz to stay with you?

A Yes.

Q How did you know that?

A I think Sergeant DeSimone told me, or else Jarmolowicz told me.

Q Jarmolowicz told you?

A Jarmolowicz.

Q Now, sometime after that Mr. Jarmolowicz [illegible] to you and said to you: "William: if you didn't [illegible] don't admit it", didn't he?

A Yes.

Q Now, these lie detector tests on the 26th, how long were they?

A Not very long.

Q Did they tire you?

A Yes.

Q What?

A Yes. It was mostly the questions he was asking me, not when the machine was running.

Q How long did he question you? Didn't he say there were nine or ten incidents where the machine was turned on for a minute and a half or two minutes? Isn't that what he said?

A Yes.

Q Would it?

A Yes.

Q Then would he question you for ten or fifteen minutes or how long?

[fol. 177] A Maybe ten or fifteen minutes.

Q And then he would stop and start again, is that the idea?

A Yes.

Q And when these periods stopped, then you would see Mr. Jarmolowicz, he would be out in the room?

A Yes.

Q And he was present all the time?

A Yes.

Q This first statement starts, that is [illegible] 10:45 according to the report here exercise no. 1 starting at the wrong one. 10:30 is the first date that's on this and there was some delay in waiting for Weberman that night?

A Yes.

Q Considerable delay, an hour or an hour and a half or so?

A Maybe.

Q Were they trying to get the Stenographer?

A Yes.

Q Mr. Jarmolowicz was there, was he not?

A Yes.

Q Well, when you went down to the Detective Bureau on that Thursday, November 15, you then could recall what you had done on the night of November 12th, couldn't you?

A Yes.

Q And did you go out of the house through the back door?

A Yes.

[fol. 178] Q Did your father instruct you to stay in your room that night?

A Yes.

Q And what floor was your room on?

A The second floor.

Q And do you recall what time you went out?

A About seven.

Q Now, when you went out the back door, how did you go down to the store? Did you go down Park Avenue or down 16th Avenue?

A Over to 15th Avenue and 31st Street and then straight up.

Q Didn't you say when Mr. Jarmolowicz asked you a question before that you didn't recall whether you had gone out of the house?

(No answer given.)

Q Didn't you say that you didn't recall whether you had been locked in your room and gotten out that night?

A No, I didn't recall it.

Q You make a distinction between being locked in your room and just being ordered to your room, is that right?

A Yes.

Q Is that what you mean?

A Yes.

Q Well, take page five of the Giambra statement, which is S-6. You wrote this change in there, you added that word "her"?

A Yes.

Q you read that statement over word for word, didn't you, William?

A Yes.

[fol. 179] Q And you put that word "her" in there?

A Yes.

Q You were alert then, weren't you? I mean, you were wide awake?

A I wasn't sleeping.

Q Take a look at the first page of that statement. Did they ask you that first question, what is your name? Was that question asked of you, William?

A Yes.

Q Was the next question, where do you live?

A What my age is.

Q They asked you how old you are?

A Yes.

Q That question was asked of you too, and then they asked you a question about what time you left, is that there?

A Yes.

Q Now, go back to the first page there. At that time there was an apartment being constructed on the southeast corner of Park Avenue and East 31st Street, wasn't there?

A Yes.

Q Had you ever buried anything down there in the sand?

A No.

Q Had you ever buried anything down there in the sand?

A No.

Q Now, your father and mother told you that they were going to go down to the Probation Office and report [fol. 180] you for your conduct, didn't they?

A Yes.

Q What did they say that they were going to report you for, William?

A Goofing off.

Q What?

A I wasn't behaving.

Q You were goofing off?
A Yes, I wasn't behaving.
Q What is goofing off?
A I wasn't behaving right.
Q In what way did your mother and father complain about you?
A It could have been school reports?
Q Pardon me?
A It could have been school reports?
Q Could be?
A School reports.
Q What else? What time did you get in on the 12th and what time did you get back home?
A Nine, quarter after nine.
Q Well, your father knew you had been out?
A I don't know.
Q Didn't he know you had been out on that Monday night?
A I was supposed to be in my room. I don't know if he knew I left or not.
Q He knew you had been out?
A I don't know.

[fol. 181] Q You told Officer Muhall on Thursday, he said, "I sent Billy to his room and he walked out."
A Yeah.
Q Did he know what time you got in that night, Monday night?
A I don't know.
Q Did your father know? Was he there when you came in?
A No.
Q Was he in bed?
A Either in bed or maybe down the cellar working or else looking at television.

• • • •

[fol. 197] MR. RUBENSTEIN: If your Honor please, for the purpose of the record we have no additional witnesses to call. I believe there had been testimony that the juvenile had originally—when we were called into the matter he gave us a list of names of boys who he thought

might have been at the candy store on the night of November 12th. Three of the boys were interviewed by Detectice DeSimone and myself. The names of the boys were—

MR. JOELSON: Vincent Deovidio, Walter Ottlinghouse and Bill Goodwin.

MR. RUBENSTEIN: The taree boys stated that they normally hung around that candy store and that Billy Monks also hung around but they could neither confirm or deny the fact that night since this took place months after and they couldn't remember night to night whether they had been there.

THE COURT: Nor could they have been there.

MR. RUBENSTEIN: Except that they normally and generally hung around that place and that Billy Monks also hung around that place.

Now, I would also want to state for the record that we interviewed Billy Monks' on or about March 8th, Mr. [fol. 198] Evers and myself, for the first time and from the date of our first visit to him that he denied any implication in the matter and he recanted completely any confession or statement that he had made.

THE COURT: Is there an order on your appointment?

MR. RUBENSTEIN: There is a letter of appointment. We were here to see him the very day that the letter was written because we had been notified by telephone of our appointment and then confirmed subsequently by the letter. The letter was dated March 8, 1957.

MR. EVERS: We were notified by phone on the preceding day, preceding Friday, so we made the arrangements to see him as soon as possible and actually on the date of the letter—

THE COURT: Well, the letter is dated March 8th.

MR. JOELSON: Yes, sir, we—

* * * * *

[fol. 209] MR. JOELSON: * * *

May I recall Mr. Monks for just one or two questions?

THE COURT: Yes.

WILLIAM MONKS, having been previously sworn, is recalled and testified as follows:

FURTHER CROSS-EXAMINATION

BY MR. JOELSON:

Q Mr. Monks, did you just hear the testimony of Mr. Rohloff which indicated that you were not in school on November 13, 1956?

A Yes.

Q Now, is it still your recollection that the night you were in that candy store on 15th Avenue and East 22nd Street watching boys playing the pinball machine and talking was a night preceding a day when you went to school?

[fol. 210] A Will you break that down in smaller words?

Q Well, do you still say you went to school the day after these things happened in the candy store?

A No.

Q How do you know that the night you are describing as having been in the candy store was November 12, 1956? How do you fix that date?

A Because it was only three days after this here happened. It was only three days after it happened when I was first picked up and I can remember that.

Q But you still couldn't remember before whether you were in school the next day, is that right?

A Yes.

Q And you couldn't remember whether or not you had been locked or closed in your room by your father on November 12th, 1956, is that right?

A Yes.

MR. JOELSON: That's all.

BY THE COURT:

Q William, do you have any recollection of what you did during the daytime on Armistice Day a year ago which would be November 12, 1956?

A No.

Q Well, that whole week practically you were out of school. Do you remember what you did?

[fol. 211] A Yes, I was collecting for Mr. Abrahams.

Q What does he do?

A In the paper business, delivers papers.

Q Were you working for him during that week?

A Yes.

Q How long had you been working for Abrahams?

A Maybe a year and a half?

* * * *

[fol. 212] BY MR. JOELSON:

Q William, do you remember what you did on the morning of November 13, 1956?

A No.

Q Didn't you testify before that on the morning after this time in the candy store on 22nd Street that you rode back to the store on your bicycle and then you went to Ellison Street? Do you now change that testimony?

A Yes.

Q Why did you say before that on the morning after you were in the candy store on November 12th and you went back to the store the following morning and then drove your bicycle to Ellison Street?

A I thought I went to school that day.

Q So your best recollection is that you went to school the day after this incident in the candy store, is that correct?

MR. RUBENSTEIN: If your Honor please, he has already answered that question.

THE COURT: I will permit the question.

THE WITNESS: Yeah, but now I know I didn't go to school so I know what I did, I went over and probably met Mr. Abrahams and collected for him.

* * * *

[fol. 214] JOSEPH MEOLA, sworn.

DIRECT EXAMINATION

BY MR. JOELSON:

Q Detective Meole, are you a member of the Paterson police force?

A Yes, sir.

Q On February 15, 1957, were you assigned to duty in the Detective Bureau?

A I was.

Q And on that date did you have occasion to question William Monks?

A The following day, sir, early in the morning which was a continuation of that job right there.

Q Did you go to William Monks' home on February 15?

A Yes, sir.

Q And as a result of the visit to his home did you go any place else?

A Yes, I went to several other places and finally wound up at 421 Ellison Street where William Monks was living.

Q Whose home is there?

A Mr. Rammage.

[fol. 215] Q And at this time did you take Monks into custody?

A Yes, I did.

Q And did you ask him about anything?

A I questioned him about two purse snatches that occurred earlier in the evening which he readily admitted to.

Q Now, did you question him at all in any respect about either the assault on Giovanna Giambra or Naomi Weiss?

A I did not.

* * * *

CROSS-EXAMINATION

BY MR. RUBENSTEIN:

Q About what time did you pick him up? Was it early morning of the 16th?
A Approximately one o'clock.
Q He was asleep?
A Yes.
Q You woke him up?
A Yes.
Q Got him dressed?
A Yes.
[fol. 216] Q Took him down to the station?
A That's right.
Q How long did he stay at the station?
A He stayed in the station approximately an hour and a half, two hours.
Q And then he went where?
A He went with us and pointed out to where he buried the purses.
Q What time was that?
A I would say approximately 3:30 or four o'clock.
Q Were the places he pointed out the correct places?
A The first time, no.
Q The second time?
A Yes.
Q And you recovered the purses?
A We did.
Q So he was still up at 4:30?
A Yes, sir.
Q Were you with him constantly from the time he was taken into custody at one o'clock until 4:30?
A Yes.
Q You were there at all times?
A Yes.
Q Did anybody else ask him any questions?
A No. Detective Spesanti was with me but he didn't ask any questions.
Q At 4:30 what happened to William?
[fol. 217] A We continued talking to William.
Q Until?

A Approximately twelve o'clock.

Q Noon?

A Noon hour.

Q In other words, from the time at one o'clock until the next day at noon or twelve you talked to him?

A Yes.

Q And he had already admitted the purse snatchings?

A Yes.

Q He showed you where they were?

A That's right.

Q About what time did you recover the purses?

A Well, that morning about 3:30.

Q You had already recovered the purses?

A That's right.

Q Can you tell me what you spoke about from 3:30 until twelve o'clock noon the next day if he had already admitted it?

THE COURT: I think there is a little misunderstanding on that point. Straighten those times out again.

Q About 3:30 in the morning is when you found the purses, is that correct?

A Yes.

Q And you continued to question him or talk to him until noontime the next day?

fol. 218 A Well, it wasn't persistent questioning; on and off.

Q Until noontime the next day?

A Approximately.

Q I ask you what were you questioning him about? What were you discussing with him until 3:30 until noontime?

A Well, we had been getting a series of house burglaries in the neighborhood, larencies from autos, bicycle thefts.

Q You were asking him about these other things that you thought he might be implicated in?

A Yes.

Q You say you didn't ask him a question about Giambra or Weiss?

A Definitely not.

Q Detective, you were with Monks on February 26th also, weren't you?

A Yes, I think I was.

Q About when did you see Monks?

A I don't follow you.

Q On the 26th about what time of the day did you first see Monks?

A I have to refer to my reports.

Q If you have your reports, refer to anything which will refresh your recollection. Are these reports that you made?

A I along with Sergeant Ventimiglia.

Q Did you type them up yourself?

A No.

Q Did you make the reports?

[fol. 219] DETECTIVE VENTIMIGLIA: I was a much faster typist.

Q Were you there with him when they were made?

A Oh, yes.

Q All right, read it over to refresh your recollection. First now I ask you do you have any recollection of it without those notes, Detective?

A Pardon?

Q Do you have any recollection of the 26th incident without those notes?

A Well, there was 21, 22, and so forth, and I can't pick one particular day out and recall exactly what happened.

Q Were you there when he signed the confession?

A Oh, yes.

Q That's the 26th, does that refresh your recollection?

A Yes, yes.

* * * *

Q Were you with the boy all day on that day, if you recall?

A Well, no, there was times when he was with Mr. Richard Arther.

[fol. 220] Q Other than the times that he was with Mr. Richard Arther?

A Yes.

Q Were any pictures or photographs of any
shown to Willie Monks on that day?

Q Do you remember, without referring to the
Mr. Meola?

A Offhand I wouldn't say. I have to refer
report.

THE WITNESS: I don't recall him being shown
Q You say that because there is no refere
there?

A I truthfully don't recall showing any. There
have been. I may have gone to the men's room or
have stayed outside for a few minutes.

Q But you don't recall any photographs?

A I don't recall any photographs.

[fol. 222] THE COURT: I want to ask Willia
you ask for this lie detector test?

WILLIAM MONKS: I told them I would take

THE COURT: Did you specifically ask for it
agree to it?

WILLIAM MONKS: I suggested it.

THE COURT: You suggested it first before the

WILLIAM MONKS: Yes, sir.

VINCENT DESIMONE, having been previously
is recalled and testified as follows:

[fol. 223] BY MR. JOELSON:

Q Detective DeSimone, could you tell us, if
member, whether or not Willie Monks asked for
lie detector test or whether he was asked whet
would submit to a lie detector test?

A He was asked by me, sir, if he was wi
submit to a lie detector test.

Q What was his answer?

A He says, "Yeah, they are fake anyway."

Q Do you remember where that was?

go into this school, in — and the school lights went on, and all this is around the time of 8:30, and William says after the incident of striking her, and he very graphically described that to Detective Desimone, after striking her down in the street, 14th Avenue, that he looked down then on 14th Avenue towards where Mrs. Kearns was and he saw people, and then he decided to go through the park.

Well, it's quite strange that at that very moment, or around that time, that Mrs. Kearns says the lights went on — and, of course, there is a fair inference that this Chambers girl with her notebook for the church affair, her eventual destination that night was the church.

On November 13, and Mr. Jackson has pointed this out, William said he went to school. He didn't go to school at all. He didn't go the 14th, 15th or the 16th, all the other days in that week. The 12th was a holiday.

His father said to him in effect, William go to his room that night. He doesn't stay there. He ducks out the cellar door, this is on the 12th.

The mother and father are in trepidation about this boy, and they are concerned, and they go down to the probation office the next morning and say he is getting out of hand. I can't say that I am impressed by his testimony on the witness stand. I don't think he tells the truth.

The Chambers incident was a brutal murder, and I pledge William Monks delinquent and hold him responsible for that incident.

Now, with respect to the Weiss affair, the Weiss affair is case number J1360 and it charges that on [illegible] February 24, 1956, at about 10:10 p.m., on East 31st Street between Broadway and 5th Avenue, William Monks did forcibly strike Naomi Weiss on the head with a blunt instrument causing a deep laceration which required 15 sutures, and resulting in her hospitalization for a period of between six and seven weeks, and further that he did steal and carry away her pocketbook containing thirty dollars, an Elgin wrist watch and various other articles.

All the factual determinations that I have made generally with respect to the confessions hold true with respect to the Weiss situation.

We have the admission of William, and he so testifies on the stand, that he and Stopford went into 465 - 15th Avenue on other occasions and used the bathroom there, and isn't it peculiar or a strange coincidence, that the footsteps from the scene of the Weiss assault led to this house.

As his father said it's a little strange that he ran in front of his house, but the physical characteristic at 10 o'clock at night are such with the trees and the general characteristic there that he wouldn't be noticed.

Another item that is striking as far as Miss Weiss' testimony is concerned, and she indicated that the foot- [fol. 231] steps came from over her right shoulder in that area, which, if they were walking north on the westerly side of East 31st Street towards Broadway, that would be the direction that William would come in, come towards her if he were hiding behind the tree which he indicates in one of these photographs.

William's mother takes the stand. She said we had discussed this Weiss case rather frequently in the house. William says no; he said he didn't know anything about the Weiss case. But, again, you have the corroborating evidence with respect to the contents of the purse, the admissions to Ogg and Stopford and the confessions.

Now, he doesn't say with respect to the Weiss matter that he read about that in the paper. He would have us believe that the detectives told him the complete story, that Mr. Jarmolowicz, the officer appointed by the court to protect his rights, stood by and let these detectives impose upon William and I find that is not so.

I find that when he pointed out the location of the Weiss offense that he indicated that he knew the place where it occurred, and that he knew before that he was the party responsible for the commission of the offense. [fol. 232] You can't possibly reconcile his story that he didn't know about the Weiss affair at all with either Ogg or Stopford where he pointed out that to them. If he had said that he knew about the Weiss affair completely from the newspapers it would have been consistent.

So, I find that S-5 is a voluntary statement and was taken under circumstances that were fair to the defendant. I don't say that I completely approve of the incident, all the incidents with respect to the lie detector test, but I don't think in this case that any harm was done to the rights of the defendant, and I judge him to be a delinquent because of the circumstances of the Weiss case.

Now, on the offense J1359, which is the Gambra matter, the disposition will be that William Monks will be committed to the New Jersey Reformatory at Bordentown for indeterminate term, and on the Weiss case, which is J1360, the disposition will be that the said William Monks will be committed to the Reformatory at Bordentown for an indeterminate term.

This is the institution where he has been since Judge Schamach sentenced him thereon March 20th, and the reason for that disposition at that time was that he would get psychiatric treatment, and it will be noted in a com- [fol. 233] munication from the Court to the authorities at Bordentown that it is expected that such treatment will be given. The Menlo report, or copies of them should be submitted to Bordentown.

Now, it's in the contemplation of the Court that he may from time to time be transferred from one institution to another as the law and the rules of the court may provide. You have read, Mr. Judson, the Menlo reports, and counsel, you have had an opportunity to see the Menlo reports, and I can't see that there are any other provisions that can be made at this time with respect to his rehabilitation other than I have indicated in what I have said as far as sentencing is concerned.

Now, Mr. Evers and Mr. Rubenstein want a general objection to my findings which is noted.

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

Order

BE IT REMEMBERED, that on this 11th day of December in the year nineteen hundred and fifty-seven, the above named juvenile appeared before me, Judge of the Juvenile and Domestic Relations Court of the County of Passaic, on a petition under oath made by Sgt. Edward J. Keys, of the City of Paterson charging the said juvenile with juvenile delinquency as set forth in petition number J-1359 in accordance with the provisions of the juvenile and domestic relations court law, N.J.S. 2A:4-1 to 2A:4-41, revised statutes of New Jersey, 1951, and the supplements thereto and amendments thereof.

The evidence being closed, I did decide that the said petition was sustained and the above named juvenile was adjudged a juvenile delinquent, whereupon the following disposition is ordered: that said William Monks is committed to the New Jersey Reformatory at Bordentown for an indeterminate term. The Court recommends psychiatric treatment from the date of this my order.

Hugh C. Spernow
Judge

IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

ORDER

BE IT REMEMBERED, that on this 11th day of December in the year nineteen hundred and fifty-seven, the above named juvenile appeared before me, Judge of the Juvenile and Domestic Relations Court of the County of Passaic, on a petition under oath made by Sgt. Edward J. Keys of the City of Paterson charging the said juvenile with juvenile delinquency as set forth in petition number J-1360 in accordance with the provisions of the juvenile and domestic relations court law, N.J.S. 2A:4-1 to 2A:4-41, revised statutes of New Jersey, 1951, and the supplements thereto and amendments thereof.

The evidence being closed, I did decide that the said petition was sustained and the above named juvenile was adjudged a juvenile delinquent, whereupon the following disposition is ordered: Committed to the New Jersey Reformatory at Bordentown for an indeterminate term. The Court recommends psychiatric treatment; from the date of this my order.

HUGH C. SPERNOW
Judge

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IN THE JUVENILE AND DOMESTIC RELATIONS COURT OF PASSAIC COUNTY

April 11, 1958

Honorable Hugh C. Spernow, Judge
Juvenile and Domestic Relations Court
Passaic County
Patterson, New Jersey

Re: William Monks, NJRB #22588-J

Dear Judge Spernow:

Recently we wrote to the Deputy Attorney General assigned to the Department of Institutions and Agencies as follows:

"This man was sentenced to Bordentown as a juvenile by the Passaic Juvenile and Domestic Relations Court on December 12, 1957. Because of the amendment to the Juvenile Court Act by the present session of the Legislature, it would appear that we must determine the maximum of this man's sentence and this apparently will depend upon definition of the crime as murder in the first degree, murder in the second degree, or manslaughter.

"None of these words is used in the commitment but rather we find this language, 'New sentence received by Juvenile Court: (1) Did forcibly strike Naomi Weiss, age 42, on the head with a blunt instrument causing a deep laceration which required fifteen sutures and resulting in her hospitalization for a period of between six and seven weeks, and did steal and carry away her pocketbook containing $30.00 and an Elgin wrist watch and other articles. (2) Did on November 12, 1956, while in the commission of an assault and robbery, strike Giovanna Giambra, age 25, on the head with a blunt instrument on repeated occasions, which resulted in her death on November 13, 1956."

"We will appreciate it if you will advise us as to what category of crime as defined in the act this language fits or in the alternative, advise us how to proceed."

Mr. Urbaniak, in his reply, suggests that we communicate with you "to ascertain what crime was committed by the above captioned subject in order to assist you in fixing his maximum sentence." The revision of the Juvenile Court Act referred to above is Chapter 220, P.L. 1957.

Very truly yours,

ALBERT C. WAGNER
Superintendent

ACW:mmb

IN THE JUVENILE AND DOMESTIC RELATIONS
COURT OF PASSAIC COUNTY
JUVENILE AND DOMESTIC RELATIONS COURT
PASSAIC COUNTY

COURT HOUSE PATERSON 1, N. J.

HUGH C. SPERNOW
Judge

Domestic Relations Court
LAmbert 5-5020

THOMAS F. HAND
Clerk

May 2, 1958

ALBERT C. WAGNER, Superintendent
N. J. Reformatory
Bordentown, New Jersey

Re: William Monks
NJRB # 22588-J

Dear Mr. Wagner:

I served copies of your letter of April 11, 1958 upon Deputy Attorney General Charles S. Joelson, and J. Mortimer Rubenstein and James P. Evers, counsel for William Monks, constituting this as a form of notice of motion. These attorneys appeared before me on April 21, 1958 and the contents of your letter were discussed. You will note that a notice of appeal has been filed in this matter.

To assist you in fixing the maximum sentence, I herewith notify you that William Monks' determination of delinquency by the Court for his *actions concerning Giovanni Gisabori's death was based upon facts constituting murder in the first degree. The determination of delinquency by the Court for his actions in the Naomi Weiss offense, was based upon facts constituting robbery and atrocious assault and battery.*

Very truly yours,

/s/ Hugh C. Spernow
Judge.

hcs:mp

cc: Atty. Gen. John Thevos
J. Mortimer Rubenstein, Esq.
James P. Evers, Esq.

IN THE JUVENILE AND DOMESTIC RELATIONS
COURT OF PASSAIC COUNTY

NEW JERSEY REFORMATORY AT BORDENTOWN

(TRANSFER TO STATE PRISON)

45-305

Date: May 31 1967

TO: New Jersey State Prison

RE: William Monks NJRB # 22588-J

County: Passaic Crime: JUV DELQ (Murder)

Original Maximum: Life

Present Earned time allowance: 728 days

Adjusted Maximum

Previous " " " "

Co. Jail credit to date of sentence: None

Owes on this sentence:
Life

Parole Revoked On:
Never on parole

s John Argentero
JOHN ARGENTERO
Classification Officer

[NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS]

IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-1549-66

STATE OF NEW JERSEY, COMPLAINANT-RESPONDENT

vs

WILLIAM MONKS, DEFENDANT-APPELLANT

Argued February 26, 1968—Decided March 27, 1968

Before Judges KILKENNY, CARTON and COLLESTER

On appeal from Passaic County Juvenile and Domestic Relations Court

MR. RICHARD HELLER argued the cause for appellant.

MR. ARCHIBALD KREIGER, Assistant County Prosecutor, argued the cause for respondent (MR. JOHN G. THEVOS, Passaic County Prosecutor, attorney).

The opinion of the court was delivered

PER CURIAM

On December 11, 1957 defendant, then 15 years of age, was found guilty of two separate acts of juvenile delinquency and sentenced by the judge of the Juvenile and Domestic Relations Court to indeterminate terms therefor at the Bordentown Reformatory. He filed a timely appeal in January 1958, but suffered it to remain dormant until 1967 when he was transferred to State Prison, where he is now confined. We granted him leave on August 21, 1967 to prosecute his appeal as an indigent, assigned counsel to represent him and provided a transcript.

The two incidents were of similar pattern, though separated in time by several months and involving different victims. On February 24, 1956 the purse of Naomi

Weiss was snatched. She was struck on the head with a blunt instrument when she attempted to resist and suffered serious injuries. The victim was unable to identify her assailant. On November 12, 1956 the purse of Giovanna Giambra was snatched. She too was struck over the head with a blunt instrument, but her injuries were so severe that she died the next day. This victim was also unable to identify her assailant. Both events occurred in the City of Paterson.

Defendant was taken into custody by the police on February 16, 1957 in connection with two unrelated purse snatchings. During several interviews he revealed knowledge of the Weiss incident. Finally, on February 26, 1957 he admitted that he had attacked Miss Weiss and described the attack in some detail. The police then took him to the scene of the robbery and he reenacted the events of that evening for them. However, after this reenactment, defendant recanted and denied participation in the Weiss attack.

After further interrogation, defendant admitted his involvement in the Giambra episode and reconstructed it for the police. Being advised by the officers to tell the truth and unburden his conscience, defendant agreed to make statements concerning both attacks. A court reporter was summoned to take the statements in question and answer form. During the hour-long wait for the reporter to arrive, the police told defendant that he was being asked to give a voluntary statement and that it could be used against him. He agreed to give the statements and did so. In them he admitted committing both offenses.

It is undisputed that at no time was defendant informed that he could see an attorney or his parents. Nor did he make any such request. However, Mr. Jarmolowicz, a probation officer, was appointed by the judge of the Juvenile and Domestic Relations Court to protect defendant against any impropriety by the police. The probation officer was present throughout the police interrogations and when defendant gave his written signed statements incriminating himself. Mr. Jarmolowicz was absent only when defendant reenacted the Weiss attack

and when defendant was alone with the polygraph operator. Jarmolowicz testified that defendant was not mistreated, was alert and relaxed throughout the day, and the questioning was carried on in brief sessions with frequent breaks. Defendant was being cared for at the Children's Shelter during this period.

I.

Defendant's first contention is that his admissions and confessions were obtained in violation of due process and were, therefore, improperly received in evidence.

The record supports the trial court's finding that the police interrogation was fair, was conducted in the presence of a court-appointed officer to insure its fairness and who testified thereto, and was not the product of force, fear or promise of any kind. The questioning was not prolonged at any one time and there were frequent breaks. The initial interrogations were not only brief but pertained primarily to the unrelated purse snatchings for which defendant had originally been taken into custody.

The statements were taken late in the evening but this was due to defendant's withholding his willingness to give them until after dinner and the delay in getting the stenographer, who did not arrive until 10:30 P.M. The statement concerning the Weiss attack was prepared from 10:45 to 11:30 P.M. From midnight until 1 A.M., the statement concerning the Giambra offense was taken. Defendant then signed both after making a few corrections.

These confessions were made long before *Escobedo* v. *Illinois*, 378 *U.S* 478 (1964) and *Miranda* v. *Arizona*, 384 *U.S.* 436 (1966). Defendant concedes that these cases are not applicable, not being retroactive under *Johnson* v. *New Jersey*, 384 *U.S.* 719 (1966). We agree with the trial court's finding that they were voluntarily made and were obtained under circumstances fundamentally fair. The court-appointed officer, who supervised the interrogation as an officer of the court, was in attendance at all critical moments to insure fundamental fairness and verified that fact.

Defendant cites in support of his position *Haley* v. *Ohio*, 332 *U.S.* 596 (1948); *Gallegos* v. *Colorado*, 370

U.S. 49 (1962); *State in the Interest of Carlo*, 48 *N.J.* 224 (1966), and *In re Gault*, 387 *U.S.* 1 (1967). These cases are factually distinguisable from the instant case. In *Haley*, a confession of murder by a 15-year-old boy was held involuntary because he was questioned by the police, working in relays, hour after hour, with no one at his side to see that the police went so far and no further, to see that they stopped short of coercion. Such was not the situation here. In *Carlo*, the youths underwent continuous questioning for over ten hours, in the hostile atmosphere of a police station, while repeated efforts on the part of their parents to see them were rebuffed. In a similar way, the other cited cases may be distinguished.

In brief, the decision in each case depends upon the totality of its own circumstances. Here, no physical coercion was employed. Defendant was not subjected to long and gruelling interrogations by relays of police officers. While his parents or an attorney were not present, their presence was not sought and defendant had by his side an experienced probation officer, at the court's direction, to act as his guardian during the questioning. Defendant's versions of the attacks were fully consistent with the physical evidence. His statements were taken by an official court reporter in question and answer form and reproduced verbatim on a typewriter. Thus, there was every effort made to insure an accurate reproduction under fundamentally fair circumstances.

II.

Defendant's next point is that there was insufficient corroboration in the Giambra case to support a conviction.

We find to the contrary. Defendant admitted his participation in either or both attacks to ten different people, including three of his friends, his mother and several police officers. His knowledge of the particulars of each offense was too great to be mere guesswork or fantasy. He knew and identified the kind of purse taken from Miss Giambra, although that purse was never found. He

knew the contents of each purse. In addition, Miss Giambra described her assailant as wearing a dark leather jacket and, after defendant admitted owning such a jacket and wearing it during his attack on Miss Giambra, such a jacket was found in his home. We need not repeat other corroborating evidence expressed in the trial judge's findings.

Argument is made that although defendant admitted doing "this terrible thing," when asked by his mother, there was no showing that the "terrible thing" related to the Giambra incident. Considering the totality of the evidence and defendant's confessions of both offenses, it is manifest that the "terrible thing" embraced what his admissions specified.

III.

It is next contended that the trial court erred in permitting testimony that defendant had strangled a cat.

Assuming that this evidence should not have been admitted because it tended to show only that defendant had a brutal nature, the admission does not warrant a reversal. The case was tried without a jury and the experienced trial judge made no use of this evidence or reference thereto in his findings. Indeed, the photograph offered at the time this testimony was adduced was later removed from the case at the request of the State. This indicates that the trial judge was actually removing from the case the entire incident about the cat. Thus, the testimony as to the strangling of a cat was harmless error, at most, and had no bearing on the issue of defendant's guilt.

IV.

The final argument made by defendant is that his present confinement at State Prison for life is illegal.

When defendant was committed on December 11, 1957 to Bordentown Reformatory, pursuant to *N.J.S.2A*:4-37 (b), the commitment was for an indeterminate term. The statute, as then worded, provided no maximum period for the commitment, or any definite time for the confinement.

N.J.S.2A:4-37(b) was amended by *L.* 1957 *c.* 220, effective January 6, 1958, to provide that the time of confinement or parole shall not extend beyond the date upon which the child attains the age of 21 years, "except, that if the adjudication of juvenile delinquency is predicated upon an offense which, if committed by a person of the age of 18 years or over, would constitute any form of homicide as defined in sections 2*A*:113-1, 2*A*:113-2, 2*A*:113-4 and 2*A*:113-5 of the New Jersey statutes then the period of confinement shall be indeterminate and shall continue until the appropriate paroling authority determines that such person should be paroled, but in such case the period of confinement and parole shall not exceed the maximum provided by law for such offense if committed by a person of the age of 18 years or over * * *."

By reason of that amendment, the Superintendent of Bordentown Reformatory requested the Passaic County Juvenile and Domestic Relations Court to specify the crimes defendant committed, if he had been 18 years or over. After consultation with the attorneys in the case, the Juvenile Court replied on May 2, 1958 that as to the Weiss offense the crime would be atrocious assault and battery, and as to Giambra it would be murder in the first degree. On the basis thereof, defendant's maximum confinement was reflected in the records as "for life."

In *State* v. *Smigelski*, 30 *N.J.* 513, 526-527 (1959), the question was raised whether the statute was *ex post facto* and, hence, illegal as to a sentence imposed before its effective date. The court upheld the statute as beneficial and ameliorative, in that it clarified the exact period to be served by the juvenile as opposed to the former indefinite term. Thus, defendant knows his maximum term and when he becomes eligible for parole. We are advised that defendant becomes eligible to apply for parole again in 1969.

Defendant's transfer from Bordentown Reformatory to State Prison was authorized by N.J.S.A. 30:4-85. We find no merit in any claim that this improperly affected the possibility of his parole.

The judgments are affirmed.

IN THE SUPREME COURT OF NEW JERSEY

C-214 September Term 1967

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT

vs.

WILLIAM MONKS, DEFENDANT-PETITIONER

ON PETITION FOR CERTIFICATION ORDER
DENYING PETITION—May 28, 1968

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 28th day of May, 1968.

/s/ John H. Geldea
Clerk of the Supreme Court

SUPREME COURT OF THE UNITED STATES

No. 712 Misc., October Term, 1968

WILLIAM MONKS, PETITIONER

v.

NEW JERSEY

On petition for writ of Certiorari to the Supreme Court of the State of New Jersey.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 19, 1969

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1406 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompained the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 368148 304

SUPREME COURT, U. S.

FILED
DEC 15 1969
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 127

WILLIAM MONKS,

Petitioner,

—v.—

NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

BRIEF FOR PETITIONER

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

Counsel for Petitioner
Appointed by the Court

Of Counsel:

MICHAEL MELTSNER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 127

WILLIAM MONKS,

Petitioner,

—v.—

NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT
OF NEW JERSEY, APPELLATE DIVISION

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Juvenile and Domestic Relations Court of Passaic County adjudicating petitioner a delinquent and committing him to the New Jersey Reformatory at Bordentown for an indeterminate term is unreported. It appears in the Appendix [hereafter cited as A....], at A. 213-217.

The subsequent action of the Juvenile and Domestic Relations Court determining the nature of the offenses for which petitioner had been adjudicated delinquent, for the purpose of establishing the maximum duration of his con-

finement, took the form of a letter from the juvenile judge to the reformatory superintendent. It is unreported and appears at A. 222.

The opinion of the Superior Court of New Jersey, Appellate Division, affirming these actions of the Juvenile Court, is unreported and appears at A. 224-229.

The order of the Supreme Court of New Jersey denying certification of the judgment of the Superior Court was rendered without opinion. That order appears at A. 230.[1]

Jurisdiction

The Supreme Court of New Jersey denied certification on May 28, 1968. The petition for a writ of certiorari was filed on August 19, 1968, and was granted by this Court on May 19, 1968. The jurisdiction of the Court rests upon 28 U.S.C. § 1257(3) (1964), petitioner having asserted be-

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[1] Petitioner's *pro se* petition for *certiorari* asked that the writ be directed to the Supreme Court of New Jersey, and this Court's order granting review was phrased in those terms. However, under New Jersey practice, allowance by the State's Supreme Court of certification of a final judgment of the Superior Court, Appellate Division, is discretionary, N.J. SUPREME COURT RULE 1:10-2, RULES GOVERNING THE NEW JERSEY COURTS (1968), and in this case the Supreme Court of New Jersey denied petitioner's application for certification (A. 230). Under those circumstances, this Court's writ should properly run to the Superior Court, *Virginian Ry. Co.* v. *Mullens*, 271 U.S. 220, 222 (1926); *Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.* v. *Rock*, 279 U.S. 410, 411-412 (1929); *Callender* v. *Florida*, 383 U.S. 270 (1966); *Lee* v. *Florida*, 392 U.S. 378 (1968); and counsel, in this Brief, has accordingly styled the proceedings as "On Writ of Certiorari to the Superior Court of New Jersey, Appellate Division." Of course, the time fixed by law for a *certiorari* petition runs, in any event, from the date of action by the New Jersey Supreme Court, *American Railway Express Co.* v. *Levee*, 263 U.S. 19, 20-21 (1923); *Smith* v. *Illinois*, 390 U.S. 129 (1968), so the petition herein was timely filed.

low and asserting here the deprivation of rights secured by the Constitution of the United States.

Questions Presented[2]

1. Were petitioner's confessions to the police involuntary, and did their admission into evidence therefore violate his rights under the Fifth and Fourteenth Amendments?

2. Petitioner was charged and tried on allegations of delinquency at a time when, by New Jersey law, (i) an adjudication of delinquency could be based upon any crime committed by a child of petitioner's age, and (ii) in consequence of any adjudication of delinquency, the child could be committed for the maximum term of his natural life. Subsequent to his being adjudged delinquent and committed, retroactive legislation limited the maximum period of juvenile commitments to a child's minority—that is, it required release of the child upon his twenty-first birthday—except in cases where the adjudication of delinquency was predicated upon the commission of a homicide. In homicide cases, the maximum duration of confinement was to be the maximum sentence of imprisonment allowed by law to be imposed upon adults convicted of the applicable degree of homicide. After the effective date of the new legislation, petitioner's reformatory superintendent asked the juvenile court that had committed him to determine the character of his offenses. Following a conference with

[2] Questions arising from New Jersey's denial of a jury trial in juvenile cases, raised by the petition for *certiorari*, are not briefed herein because, upon inspection of the record, it appears that they were not properly presented below. Cf. *DeBacker* v. *Brainard*, O.T. 1969, No. 15, decided November 12, 1969.

petitioner's court-appointed counsel, but without notice to petitioner himself and in his absence, the juvenile court determined that petitioner's adjudication of delinquency was based in part upon acts constituting first degree murder, and accordingly the maximum duration of his commitment was a life term. Under these circumstances, was petitioner denied due process of law in that:

A. He was tried without fair notice of issues which determined whether he would be sentenced, in effect, to five years imprisonment or to life imprisonment; and

B. His effective sentencing to life imprisonment was done *in absentia* and without personal notice to him?[2]

Constitutional and Statutory Provisions Involved

This case involves the Self-Incrimination Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment.

It also involves the following New Jersey statutes.(1) N.J.S.A. § 2A:4-14, defining the jurisdiction of the juvenile court to adjudicate children delinquent; (2) N.J.S.A. § 2A:4-37 (both before and after its amendment effective January 6, 1958), governing the maximum duration of

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[2] Because the Petition for a Writ of Certiorari was filed *pro se*, counsel has taken greater liberty than would ordinarily be warranted in rephrasing one of the questions presented by the Petition. Question 1 in the Brief is essentially identical to Question 5 of the Petition; and we submit that Question 2 in the Brief is fairly subsumed within Questions 1, 2 and 4 of the Petition (see also pages 8-9 of the Petition). In any event, the phrasing of a certiorari petition does not delimit this Court's jurisdiction, and it would be manifestly unjust to hold a *pro se* petitioner to the terms of his uncounseled legal formulations in a case where he has solid grounds of constitutional attack upon a juvenile commitment amounting to a life sentence.

juvenile court commitments; and (3) N.J.S.A. § 2A:113-4, fixing the penalty for the crime of first degree murder.

These New Jersey provisions are set out, in order of their listing above, in Appendix A, pp. 77-80, *infra*.

Statement of the Case

A. Legal Background

The offenses giving rise to charges against petitioner occurred in 1956; his trial, in 1957. During those years, as now, New Jersey had the common form of juvenile court legislation, conferring exclusive jurisdiction on the Juvenile and Domestic Relations Court to adjudicate all cases of juvenile delinquency. Juvenile delinquency was defined as including, *inter alia*, the commission by a child younger than 18 of any act which, if committed by a person 18 or older, would be a "felony, high misdemeanor, misdmeanor, or other offense," or a "violation of any penal law."[4]

The juvenile court's dispositional powers, in the event of an adjudication of delinquency, were defined by statute. They included placement on probation, commitment to the custody of the state board of child welfare, and commitment "to a public institution established for the care, custody, instruction and reform of juvenile offenders or to any other appropriate institution which is maintained by

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[4] N.J.S.A. § 2A:4-14 (1952), App., p. 77, *infra*. These provisions, in effect in 1956-1957, were carried forward unchanged by N.J. Laws 1959, ch. 73, p. 188, § 1, N.J.S.A. § 2A:4-14 (1969 Cum. Supp.). Provisions authorizing the waiver of the exclusive jurisdiction of the juvenile court in certain situations, N.J.S.A. § 2A:4-15 (1952), are not material to the present controversy.

the state or [an affected] ... county or ... municipality," or "to any other like institution, commitment to which may be authorized by law."[5]

Institutional commitments of juveniles made under these provisions were for an indeterminate term. New Jersey statutes did not expressly limit the maximum duration of confinement to the child's minority. The New Jersey Supreme Court, in 1955, refused to find any such limitation implied in the juvenile jurisdiction; it held, in effect, that juvenile commitments were for a life term, subject to parole at any time.[6]

B. History of Proceedings

March 1, 1957, petitioner William Monks was fifteen years and four months old. (A. 6, 101.) On that day, two

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[5] N.J.S.A. § 2A:4-37 (1952), App., p. 78, *infra*. These dispositional alternatives remain available under the 1958 amendment to § 2A:4-37, App., p. 79, *infra*, whose effect was only to delimit the maximum duration of confinement allowed under juvenile commitments of the described sorts.

In 1956-1957, as now, the only New Jersey State correctional facilities for male children were the State Home for Boys at Jamesburg and the New Jersey Reformatory, with installations at Bordentown and Annandale. N.J.S.A. §§ 30:1-7, 30:4-146, -147, 30:4-156 (1964). *See In re Smigelski*, 30 N.J. 513, 521, 154 A.2d 1, 5 (1959). The Reformatory was also authorized to receive adult offenders convicted of the most serious crimes—State Prison offenses—provided only that they were less than 30 years of age and had not previously been sentenced to a state prison or reformatory term. N.J. Laws, 1957, ch. 93, p. 181, § 2 (amended in 1963 so that now only a previous state-prison sentence makes a convict under 30 ineligible for commitment to the Reformatory, N.J.S.A. § 30:4-147 (1964)). Juvenile or adult inmates of the Reformatory, 18 years of age or older, could be transferred to the State Prison upon specified administrative findings. N.J.S.A. §§ 30:4-85, 30:4-90 (1964).

[6] *Johnson* v. *State*, 18 N.J. 422, 114 A.2d 1 (1955). See *In re Smigelski*, 30 N.J. 513, 521-526, 154 A.2d 1, 5-7 (1959); *In re State in the Interest of Steenback*, 34 N.J. 89, 99-101, 167 A.2d 397, 402-403 (1961).

petitions were filed in the Juvenile and Domestic Relations Court of Passaic County, seeking to have him adjudged a delinquent child. The first alleged that, on November 12, 1956, "while in the commission of an assault and robbery, he struck Giovanna Giambra . . . on the head, with a blunt instrument on repeated occasions, which resulted in her death." (A. 3.) The second alleged that, on February 24, 1956, "he did forcibly strike Naomi Weiss . . . on the head with a blunt instrument causing a deep laceration . . . and resulting in her hospitalization . . . ; and further, that he did steal and carry away her pocketbook" containing valuables. (A. 5.)

The two petitions came on for trial together beginning December 3, 1957. (A. 6.) Petitioner denied their allegations (A. 7), and testimony was taken before a juvenile court judge.

As detailed more fully in the following subsections, the prosecution's case consisted in major part of confessional evidence: principally oral and written statements taken from petitioner by police; and reenactments by petitioner of the Giambra and Weiss assaults, photographed by a police photographer. Petitioner asked for a preliminary examination on the question of voluntariness of the statements (A. 8, 29, 84-85, 100; Tr. I, 77; II, 212-213),[7] and the court agreed to hear testimony on that issue (A. 9, 85.) His repeated objections to admission of the signed statements on the ground that they had been involuntarily extracted were later broadened to include petitioner's oral admissions to police as well. (A. 63.) He objected on the

[7] Tr. —— refers to the transcript of testimony taken at petitioner's trial, contained in the original record before this Court. It is in three volumes. Tr. I, —— refers to the transcript of December 3, 1957; Tr. II, —— refers to the transcript of December 4, 1957; Tr. III, —— refers to the transcript of December 5-11, 1957.

same grounds to admission of the reenactment photographs (A. 21-22, 39-41, 43-48, 63), and the court heard evidence on the voluntariness of the reenactments. (A. 22.) All of these defense objections were overruled, and the court admitted first the photographs (A. 43-48) and then the confessional statements (A. 105-106). During the trial, it made a provisional ruling that petitioner's confessions were voluntary, while leaving the record open for further defense testimony on the issue. (*Ibid.*) At the close of all the evidence, it again held the confessions voluntary and admissible. (A. 213-214, 216-217.)

The trial continued with several adjournments through December 11, 1957, on which date the court announced its oral opinion finding petitioner guilty of both the Giambra and Weiss offenses, adjudging him a delinquent, and committing him to the Reformatory at Bordentown for an indeterminate term. (A. 213-217.)

January 6, 1958, an amendment to the New Jersey juvenile court legislation was enacted. This provided that:

> "the time which any . . . child [adjudged delinquent by the juvenile court] shall serve in confinement or on parole shall not extend beyond that date upon which the child attains the age of 21 years, except, that if the adjudication of juvenile delinquency is predicated upon an offense which, if committed by a person of 18 years or over, would constitute any form of homicide . . . then the period of confinement shall be indeterminate and shall continue until the appropriate paroling authority determines that such person should be paroled, but in such case the period of confinement and parole shall not exceed the maximum provided by law for such offense if committed by a person of

> the age of 18 years or over . . . ." (N.J. Laws 1957, ch. 220, p. 765, §1, N.J.S.A. § 2A:4-37 (1969 Cum. Supp.), App., p. 79, *infra.*)

April 11, 1958, the Superintendent of the Bordentown Reformatory wrote to the Juvenile and Domestic Relations Court of Passaic County, calling attention to this new legislation and asking the court to determine the nature of the offenses for which petitioner had been adjudged delinquent and committed, for the purpose of fixing the maximum term of his confinement. (A. 220-221.)

The court served copies of the Superintendent's letter upon the prosecutor and upon petitioner's court-appointed trial counsel, "constituting this as a form of notice of motion." (A. 222.) April 21, 1958, all counsel appeared before the court and, in petitioner's absence, discussed the matter. (A. 222.) The upshot of the conference was a letter dated May 2, 1958, addressed by the court to the Reformatory Superintendent, stating that, "to assist you in fixing the maximum sentence," petitioner's adjudication of delinquency in the Giambra matter was "based upon facts constituting murder in the first degree," while his adjudication of delinquency in the Weiss matter was "based upon facts constituting robbery and atrocious assault and battery." (A. 222.)

The maximum term of imprisonment authorized by New Jersey law for the crime of first degree murder is life. N.J.S.A. § 2A:113-4 (1953). The next document in this record relating to petitioner's case is an administrative form, dated May 31, 1967, reflecting his transfer from the Bordentown Reformatory to the New Jersey State Prison and containing the following entries:

"ORIGINAL MAXIMUM: Life.

"OWES ON THIS TERM: Life." (A. 223.)

On January 23, 1958, petitioner's appointed counsel had filed a notice of appeal to the Superior Court, Appellate Division.[8] For reasons that do not appear in this record, that appeal was not perfected for almost ten years. Shortly after his transfer to State Prison, petitioner filed in the Superior Court a *pro se* application seeking leave to prosecute a delayed appeal *in forma pauperis*.[9] The Superior Court granted the application on August 21, 1967.[10]

New counsel appointed for petitioner urged, *inter alia*, that petitioner's confessions were involuntary and that the determination of his maximum sentence in 1956 to be "the same as though he were convicted and sentenced as an adult" was "contrary to the entire statutory scheme for the treatment and rehabilitation of juvenile offenders."[11] March 27, 1968, the Superior Court rejected these contentions and sustained both petitioner's adjudication of delinquency and his "confinement at State Prison for life" (A. 228). (A. 224-229.) It found that petitioner's confessions "were voluntarily made and were obtained under circumstances fundamentally fair." (A. 226.) The fixing of petitioner's maximum term at life imprisonment was ap-

[8] The notice is found at p. 4a of the Brief and Appendix of Defendant-Appellant filed in the Superior Court, Appellate Division, and contained in the original record before this Court.

[9] The application is not contained in the record. The date of its filing, August 15, 1967, is recited in the Superior Court's order granting the application, note 10 *infra*.

[10] Brief and Appendix of Defendant-Appellant, *supra* note 8, at 6a.

[11] *Id.* at 28-29.

proved on authority of *In re Smigelski*, 30 N.J. 513, 154 A.2d 1 (1959), which had rejected contentions that the 1958 amendment to the juvenile court laws "was *ex post facto* and, hence, illegal as to a sentence imposed before its effective date." (A. 229.)

Appointed counsel petitioned the New Jersey Supreme Court for certification of the judgment of the Superior Court. His petition challenged both of the holdings of the Superior Court just described. It also appended a *pro se* petition drafted by the petitioner, which asserted *inter alia*, that "the juvenile judge had no jurisdiction to change defendant's sentence from an indeterminate one for juvenile delinquency to life for homicide, particularly in the absence of defendant."[12] The New Jersey Supreme Court denied certification on May 28, 1968. (A. 230.)

A *pro se* petition for *certiorari* was filed on August 19, 1968, and granted by this Court on May 19, 1968 (A. 231).

C. The Case Against Petitioner

1. *The Weiss and Giambra Assaults*

Shortly after 10:00 p.m. on February 24, 1956, Miss Naomi Weiss was walking on East 31st Street near 13th Avenue in Paterson, New Jersey. (Tr. I, 48.) She heard footsteps approaching her from the rear, crossing 31st Street diagonally behind her right shoulder. (Tr. I, 49, 52-54.) She was struck down from behind and her purse was taken. (I, 49-50, 58-59.) A dress box that she carried was not taken. (I, 50, 59-61.) As a result of this assault,

[12] This passage appears at p. 12a of the appendix to Petition for Certification and Supplemental Appendix filed in the Supreme Court of New Jersey and contained in the original record before this Court.

Miss Weiss suffered a deep 2- or 3-inch head laceration (Tr. I, 58-59), entailing a skull fracture and a brain contusion that required her hospitalization for about a month (Tr. I, 12-14). She did not see her assailant. (Tr. I, 54.)

Shortly after 8:00 p.m. on November 12, 1956, Miss Giovanna Giambra left her home on East 23rd Street in Paterson (Tr. II, 287) to go to a church meeting (Tr. II, 291). She was carrying a black pocketbook. (Tr. II, 288.) Between 8:20 and 8:30 p.m., a nun residing in a convent near the church at 14th Avenue and Wall Avenue heard a scream. (Tr. III, 58.) At 8:32 p.m., a motorist observed a woman's body lying bleeding in the roadway of Wall Avenue near the church. (Tr. III, 85-86.) Policemen responding to a call at 8:35 p.m. found Miss Giambra lying in the middle of Wall Avenue bleeding from the head. (Tr. III, 38-40, 47-48.) Questioned by the officers, she said a man was following her; she heard footsteps, turned, saw a man with a dark leather jacket; he struck her; she didn't know why. (Tr. III, 42.)

Miss Giambra suffered two lacerations on the right side of her head (Tr. III, 49-50, 52), indicating two blows of a heavy blunt instrument. (III, 54.) She subsequently died as a result of multiple compound fractures of the right front and parietal bones and adjacent hemorrhaging. (Tr. III, 50-51.) Her black purse was missing, and was never found. (Tr. III, 266.)

2. *Evidence Identifying Petitioner as the Assailant: Petitioner's Confessions*

Apart from confessional statements made by the petitioner, there is no evidence of any consequence identifying him as the assailant in the Weiss and Giambra mat-

ters.[13] The case against petitioner stands entirely upon his confessions.

Petitioner made several confessions to the Weiss and Giambra assaults. The most important of these are the ones whose voluntariness and admissibility were challenged below, specifically: (1) an oral confession of the Weiss assault, made to several police officers at 4:30 p.m. on February 26, 1957; (2) a reenactment of the Weiss assault made immediately following that confession, ending, however, in a recantation of the confession between 5:00 and 6:00 p.m. on February 26; (3) two oral confessions of the Giambra assault made to the same officers sometime after 8:00 p.m. on the same day; (4) formal confessions of both assaults transcribed and signed between 10:45 p.m., February 26 and 1:00 a.m. the following morning; and (5) reenactments of both assaults photographed by a police photographer on the morning of February 27. Evidence of other confessional statements was also presented by the prosecution, but these were relatively unimportant or were clearly derivative of the major confessions just described.[14]

Petitioner's major confessions purported to recite in detail how he assaulted and robbed Miss Weiss and Miss Giambra, striking them on the head with a piece of metal and snatching their pocketbooks.[15] The stories he told con-

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[13] Appendix B, pp. 81-82, *infra*, collects and discusses the prosecution's non-confessional evidence of identity.

[14] The other confessions are identified and discussed in Appendix C, pp. 83-85, *infra*.

[15] The substance of the oral confession relative to the Weiss assault made at 4:30 p.m. on February 26, 1957, appears at A. 14-16, 74, 117-119. The reenactment and recantation of the Weiss assault, between 5:00 and 6:00 p.m. are described at A. 17-18. The oral confessions made in the Giambra matter following 8:00 p.m.

form for the most part to the known circumstances of the attacks.[16] But they contain a number of puzzling internal inconsistencies, and are discrepant from the events of the attacks in significant regards.[17] The trial judge concluded that petitioner's "statement doesn't appear to be accurate in every detail, but in the basic essential facts it's accurate." (A. 214.) Conceding all due respect to this finding, we suggest that an examination of the portions of the record collected in Appendices D and E *infra* gives considerable color to petitioner's trial testimony that his confessions were constructed in response to the accusations and demands of his interrogators—reflecting any facts they told petitioner about the Weiss and Giambra assaults, and including filler matter, often inaccurate, to round out the details.

Of course, because petitioner's interrogation was conducted by several police officers and a polygraph operator in the absence of any impartial witness,[18] it is not now possible to know reliably how much of his confessions originated with him, and how much was suggested by the police. But the twistings and turnings of petitioner's narratives—his changing of tales, his recantations and re-

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are described at A. 19-20, 135-138. The formal, signed statements taken between 10:45 p.m. February 26 and 1:00 a.m. February 27 are Exhibits S-5 and S-6, read into the record at A. 106-114. The reenactment later in the morning of February 27, is described at A. 21, 44-48, 130-134; and photographs taken of it were received as Exhibits S-7 through S-18.

[16] Appendix D, pp. 86-88, *infra*, discusses each of the aspects in which petitioner's confessions comport with, and are corroborated by, the circumstances of the offenses.

[17] Appendix E, pp. 89-91, *infra*, describes these inconsistencies and discrepancies.

[18] This assertion does not ignore Mr. Jarmolowicz, of whom more will be said *infra*.

confessions—his heedlessness (if not ignorance) of the true details of the offenses to which he was confessing, surely, bespeak considerable pressure generated by the circumstances under which his confessions were made.

We turn now to those circumstances. In reading the following account of them, the Court should have in mind that petitioner was, at the time of his arrest, *incommunicado* confinement, interrogation and confession, a grammar school child (A. 101),[19] fifteen years and four months old. (A. 6, 58.)

3. *The Circumstances Under Which Petitioner's Confessions Were Made*[20]

a. Chronology

On November 15, 1956, three days after the Giambra attack, petitioner was picked up by police and questioned about that offense. The record reveals little about the nature of the questioning. Apparently, petitioner was taken to the second floor of a police station, interrogated for about an hour, and released.[21]

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[19] Uncontradicted defense testimony.

[20] The following statement is based almost entirely upon police testimony. At a very few points, uncontradicted defense testimony is used to fill gaps in the police version of the events; but, whenever this is done, an explicit note is made of reference to a defense witness.

[21] There are only two references in the police testimony to the events of November 15. Officer Mahull testified that he went looking for petitioner on that day, in the course of "investigating anyone of any suspicious nature at all that lived in the area" (Tr. I, 66) of the offense. His testimony makes clear that he was out to pick up petitioner; but it stops short of the point at which he, or another officer, took petitioner into custody. (Tr. I, 65-68.) How-

Three months later, Detectives Meola and Spazante took petitioner into custody in connection with two purse snatchings that occurred on February 15, 1957. (A. 49, 208.) They awakened him from his sleep at about 1:00 a.m. the morning of February 16 (A. 209; see also A. 49, 208),[22] got him dressed, and took him to the police station (A. 209). After an hour and a half at the station, the officers took petitioner out to dig up the buried purses involved in the February 15 snatchings. (*Ibid.*) These purses were recovered at about 3:30 a.m. (*Ibid.*) After 3:30, the officers continued to question petitioner until about noon the following day. (A. 209-210.) The questioning, described as "on and off," concerned a series of burglaries, bicycle thefts and larcenies from automobiles in petitioner's neighborhood. (A. 210.) Petitioner was not in custody in connection with the Weiss or Giambra offenses at that time (A. 49), and the police deny that he was questioned about those offenses on February 16 (A. 208, 210).[23]

From shortly after 1:00 a.m., February 16, 1957 until his confessions ten days later, petitioner was held in con-

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ever, Detective Ventimiglia testified that petitioner was, in fact, questioned during the Giambra investigation. (A. 13, 78.) In this state of the record, it seems appropriate to refer to the uncontradicted testimony of petitioner and his father that petitioner was picked up by police at about 4:00 p.m. on November 15; that he was taken to the police station and questioned on the second floor by one or two officers for about an hour; and that he was then permitted to go home, arriving between 6:00 and 7:00 p.m. (A. 198-199; Tr. 111, 191.)

[22] At the time he was taken into custody, he was not living with his parents, but with a couple named Wramage. (A. 79, 208.)

[23] Petitioner's testimony conflicts with that of the officers in this regard. (A. 190.)

finement.[24] Except when he was being interrogated by the police, he was confined in the Children's Shelter.[25]

On February 18, Detectives DeSimone and Ventimiglia decided to question petitioner about the Giambra case. (A. 127-128.) They had been working on that unsolved case for some time; they knew that the Giambra pocketbook had never been found; and their attention was called to petitioner when they read of his connection with subsequent purse snatchings in which the purses had been buried. (*Ibid.*) The two officers accordingly went to a judge of the juvenile court, Judge Schamach, to ask his permission to question petitioner. (A. 128.) The judge gave them permission, provided that petitioner was to be questioned by the detectives only in the presence of Probation Officer Jarmolowicz. (A. 13, 98, 128, 158.)

At about 2:30 p.m. on February 18, DeSimone and Ventimiglia questioned petitioner for about an hour at the Children's Shelter, in the presence of Mr. Jarmolowicz. (A. 12-13, 48-50, 69-70, 82.) DeSimone testifies:

> "We walked into the room, introduced ourselves—he knew Jarmolowicz, I believe—we introduced our-

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[24] Police testimony is explicit that petitioner was in confinement between February 18 and February 27. (A. 70.) The question to which this testimony responds was not asked in terms that included the period between February 16 and February 18. But because the police admit taking petitioner into custody at 1:00 a.m. on February 16 (text, *supra*), and because no police testimony suggests that he was ever thereafter released, we take as uncontradicted petitioner's assertion (A. 101-102) that he was in confinement from February 16 through February 27, inclusive.

[25] The police testimony implies, although it does not explicitly state, that petitioner's place of confinement throughout these 10 days was the Children's Shelter. (*E.g.*, A. 12, 52-53, 78, 114, 159; see also Tr. 111, 72.) Petitioner's uncontradicted testimony makes the point explicit. (A. 101-102.)

selves and Ventimiglia started talking. The theme of it was, 'Willy, we heard you are in on these crimes. Now, who put you up to this? Who taught you how to steal bags? Who told you to bury them?' and things like that. He said, 'Nobody, nobody, man.' Every other word was 'man,' very surly, and every other word was 'man.' 'Oh, come on, you are only a pup, who put you up to it?' 'No one.' So then I got into the conversation. I said, 'Willy, did you ever take any other bags in that general area?' He says, 'Yes, I guess so.' I says, 'Willy, let's try to pinpoint some of these other thefts. Let's start back with 25th Street. Did you ever take a bag along 25th Street?' I proceeded to 26th, on some of them he said, 'Yeah, I think I took one there.' I didn't elaborate. 'How about 27th, 28th, 29th, 30th?' At this point he said, 'I didn't hit that woman.' I said, 'What woman?' He says, 'The Weiss woman, the one who was hit by the hospital.' So I said, 'When did that happen?' He says, 'About a year ago.' I dropped it right there.

"'How about 32d Street, 33d Street?' We got varied answers. 'Wall Avenue?' 'I didn't hit that girl.' 'What girl?' 'The Giambra girl.' 'When did that happen, Willy?' 'November 12.'

"I said, 'Willy, how do you remember that date?' He says, 'Oh, I don't know, I saw it in the paper.' I said, 'Where were you that night?' 'Oh, I was on the corner of 15th Avenue and 22nd Street in the candy store.' I said, 'How do you remember Weiss?' He says, 'Oh, I read it in the paper,' he says, 'It was snowing.' I think he made reference at this point that it was snowing that night, so we dropped it right there. So we asked him one or two questions in that vein, 'How

> do you remember this?' Then I asked him, I said, 'Willy, are you willing to take a lie detector test if permission is granted by the court?' He said, 'Oh, sure, they are fake, they can't tell you nothing.' I said, 'We are only interested if you are interested. Are you willing to take one?' He said, 'Sure, I will take it. . . .'" (A. 128-129; see also A. 42.)[26]

Ventimiglia's description of the interrogation is roughly similar (see A. 12-13, 69-70, 72-73), although with significant differences of detail.[27] Ventimiglia says that petitioner "denied any previous purse snatchings" (A. 13) prior to his street-by-street inquisition. Also, Ventimiglia remembers that petitioner at one point

> ". . . interjected that we were questioning him primarily because of the Giambra case and he said, 'I was already questioned on that and I have an alibi and I was picked up by the police and I told the police that I had been in a luncheonette at the corner of 15th Avenue and 22nd Street.'" (A. 13.)

But Ventimiglia agrees with DeSimone that "We asked Bill Monks then and there if he would submit to a lie detector test and he said he would." (A. 13.)[28]

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[26] DeSimone's testimony at A. 42 does not make clear the date of the interrogation it describes; but Detective Ventimiglia dates that interrogation on February 18, and the prosecutor so stipulates, at A. 69-70.

[27] As quoted above, DeSimone has petitioner volunteer the information that Miss Weiss was attacked near the hospital. In Ventimiglia's version, the detective asked petitioner "whether he ever snatched a bag from a woman near the hospital." (A. 13.)

[28] Responsive to a leading question by the court, petitioner testified below that he, not the police, originated the suggestion of a lie detector test. (A. 212.) This was flatly denied by DeSimone

Several days were required to arrange for the lie detector test (A. 99-100, 129), and petitioner was not questioned on February 19 or 20 (A. 51, 99-100, 129, 159). On February 21, Mr. Jarmolowicz brought petitioner from the Children's Shelter to the anteroom of the Grand Jury room in the Court House for a polygraph examination. (A. 14, 52, 55, 77, 159.) The test was conducted by Mr. Richard Arther, director of the New York office of John E. Reid and Associates. (A. 19, 55.) Detectives DeSimone, Ventimiglia and Meola met Jarmolowicz and petitioner at the courthouse and turned petitioner over to Mr. Arther. (A. 52.)[29] Arther was alone with petitioner during the polygraph test itself. (*Ibid.*) At 4:00 p.m., "the boy was put on the machine in the first of three series." (*Ibid.*)

The series ran until 5:30 p.m. (A. 52.)[30] Petitioner was driven back to the Children's Shelter by DeSimone and Jarmolowicz, arriving prior to 6:30 p.m. (A. 52-53, 159.)[31]

Sometime after his polygraph session with petitioner on February 21, Mr. Arther "requested that no one interrogate William Monks until he had a chance to carry out further tests, and that request was abided by." (A. 33.)[32]

(A. 212-213), and is inconsistent with the several police descriptions of the conversation cited in the text.

[29] None of the detectives themselves questioned petitioner on February 21. (A. 14, 52, 53, 70, 83.)

[30] Mr. Jarmolowicz testifies that petitioner was in the room with the polygraph operator for only 30 or 40 minutes (A. 159) rather than for the one-and-one-half hours reflected in Ventimiglia's notes. This is an instance of Jarmolowicz's persistent tendency to careless recollection, discussed in text, *infra*.

[31] However, Ventimiglia elsewhere testifies that *he* returned petitioner to the Children's Shelter on February 21. (A. 78.)

[32] The request is described somewhat more specifically at A. 62 as a request "[n]ot to question him concerning the commission of these two crimes."

No detective saw petitioner between February 21 and February 26. (A. 53, 99-100, 159.) On the latter date, Mr. Arther was again available. So, on February 26, petitioner was again brought to the Court House, where he was held all day and all night and was "tested" and interrogated until he confessed.

Between 9:00 and 9:30 a.m. on the 26th, Probation Officer Jarmolowicz took petitioner from the Children's Shelter. (A. 88, 159-160.) The two arrived at the Court House at about 10:00 a.m., and were joined outside the prosecutor's office by Detectives DeSimone, Ventimiglia and Meola. (A. 30, 53, 159-160.) The detectives and Jarmolowicz led petitioner to the anteroom of the Grand Jury Room where Mr. Arther had once again set up his polygraph equipment. (A. 30.) They had no conversation with petitioner (A. 30-31), but "turned him over to Mr. Arther who' . . . proceed[ed] to test him" (A. 30; see also A. 160).

Petitioner was tested and interrogated by Mr. Arther for 1½ or 2½ hours, emerging from the anteroom shortly after noon. (A. 31.)[33] During these hours, petitioner was alone with Mr. Arther. (A. 30, 33, 87, 160.) The anteroom door was secured (A. 31), and the detectives, with Mr. Jarmolowicz, waited nearby in the hall or the Grand Jury Room (*ibid.*).

After the session with Mr. Arther, petitioner was brought into the Grand Jury Room where he, Mr. Jarmolowicz and the three detectives ate a lunch consisting of coffee and

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[33] Jarmolowicz testifies that this session ran twenty to thirty minutes (A. 160), rather than about two hours. His testimony is inconsistent with the detectives', and would leave a gap of at least 1½ hours in his own narrative of the day's events. This is another instance (see note 30 *supra*) of Jarmolowicz's testimonial carelessness. (See text, *infra*.)

sandwiches. (*Ibid.*) None of the officers talked with petitioner during lunch. (*Ibid.*) "[T]hen there was a delay and we allowed him to sit over in a corner and we conferred with Mr. Arther and as a result Harry Ogg [a neighborhood friend of petitioner's][34] was brought in at approximately 2:30." (*Ibid.*) Ogg was taken into the anteroom with Arther and tested on the polygraph during a period of twenty minutes or a half hour. (A. 32, 59.) During this period, petitioner remained in the Grand Jury Room with the detectives and Mr. Jarmolowicz. (A. 32, 160.) Again, during the periods of waiting for Ogg and of Ogg's testing, no one in the room talked to petitioner. (A. 32.)

After the test on Ogg was completed, petitioner was brought into the anteroom and "confronted . . . with Ogg." (A. 32, 79.) Ogg said to petitioner that petitioner had admitted commission of the Weiss assault to Ogg.[35] (A. 79-80.) Petitioner said nothing. (A. 80.) He was in the room with Ogg only a few minutes. (A. 33.) Then Mr. Arther conducted another half-hour polygraph examination of petitioner, while the detectives and Mr. Jarmolowicz again waited in the hall or in the Grand Jury Room. (*Ibid.*)

Petitioner was brought from the anteroom back to the Grand Jury Room at "around 3:30 or 4:00 o'clock, thereabouts." (*Ibid.*) "When he came out, as a result of what Mr. Arther told us we began questioning him. . . ." (*Ibid.*) "[W]e interrogated him" from about 3:30 until shortly after 4:00. (A. 34; see also A. 14-16, 23-24.) "[T]he interrogation . . . didn't last no longer than a half hour to

[34] See Appendix C, para. A(1), *infra*.

[35] See Appendix C, para. A(1), *infra*.

three-quarters of an hour, and at 4:00 o'clock, I believe it was, that is the first time that he told us any story about any assault on Miss Weiss." (A. 34; see also A. 23.) (However, at another point in his testimony, the same detective fixes the beginning of this period of interrogation at approximately 3:00 p.m. (A. 148); and another detective testifies that petitioner's confession came at 4:30 p.m. (A. 14, 23).)[36]

This was, in any event, the first time that petitioner implicated himself in the Weiss affair. (A. 34; see also A. 70, 94.) He told DeSimone, Ventimiglia, Meola and Jarmolowicz (A. 14) that he struck Miss Weiss from behind, took her purse and a package from her, and fled to the bathroom in a nearby boarding house where he rifled the purse before discarding it. (A. 14-16.) Detective Ventimiglia testified that:

> "At this point, I asked him to describe the way he had assaulted this woman and he told us that he had struck her over the head with his hand. At that point I interjected, I said to him, 'Bill, if I were to tell you that this woman was bleeding from the head you could see that you couldn't possibly do that with your fist,' and he was hesitant and then admitted that he had used the pipe on her and that he had struck her one blow." (A. 15.)

Detective DeSimone recalls that *both* he and Ventimiglia told petitioner that petitioner could not have struck Miss

[36] Ventimiglia appears to fix the time of the entire episode later than does DeSimone. (See A. 14, 23.) The Ventimiglia account leaves considerable time unaccounted for between noon and the late afternoon.

Weiss with his fist. (A. 118.) DeSimone relates this version of the conversation:

> "I said to him, 'Willy, I don't believe you are telling me the truth.' I said, 'This woman couldn't have possibly incurred this injury, the type injury she had by someone striking her with a fist. Her head was fractured on the top,' and I spoke this language, I said, 'Willy, she would have had to go up and do a sailor's dive on the sidewalk in order to get that type of fracture,' and then he said to me, 'Well, isn't it more serious if you use a weapon rather than your fist?' I said, 'Willy, I am not concerned with whether it is serious or not, I only want the truth from you.' Then he says, 'All right, I used a lead pipe.'" (A. 118-119.)

Petitioner's story was discrepant from the known facts of the Weiss assault in at least one other serious and obvious regard. Although petitioner asserted that he had taken a package from Miss Weiss and had thrown it into a trash barrel (A. 15-16), the fact of the matter was that the Weiss assailant did not take any such package (see Appendix E, para. A(1), *infra*). DeSimone says that he did not call this discrepancy to petitioner's attention because he was not "exactly positive that [petitioner] . . . . hadn't taken the package at that time" and thought the package a "small detail." (A. 119.) Ventimiglia does not offer any explanation as to why petitioner was cross-questioned upon incriminating details but not upon potentially exculpatory ones.

Petitioner was next taken into the anteroom to identify the kind of pocketbook he claimed to have taken from Miss Weiss. (A. 16; see Appendix D, para. A(4), *infra*.) He

"agreed to accompany" the detectives to the area of the Weiss assault to show them where he had disposed of the contents of the pocketbook. (A. 17.) DeSimone, Ventimiglia, and Meola drove petitioner to the area, where they had him first reenact the attack at 31st Street and 13th Avenue, then take them to the boarding house at 31st Street and 15th Avenue, then take them to a spot on 26th Street where he said he had buried the Weiss pocketbook and its contents. (A. 17-18, 34-35, 120-121.) Here, Ventimiglia sat in the police car with petitioner while DeSimone and Meola dug at the indicated spot. (A. 34-35, 67-68.) After a while, petitioner called the detectives back, said "No, it is not there," and recanted his entire Weiss confession as a fabrication. (A. 18, 66-67.) He said "I didn't do it, I didn't do it at all." (A. 124.)

This trip to the East side of Paterson consumed between a half hour and "a little better than an hour." (A. 34, 64, 68, 85, 160.) Notwithstanding Judge Schamach's instructions (see p. 17; *supra;* pp. 47-48, *infra*), Probation Officer Jarmolowicz did not accompany petitioner and the detectives. (A. 85, 160.) At the conclusion of the trip, petitioner had recanted his Weiss confession; and he had so far said nothing indicating involvement in the Giambra matter (A. 64). He was returned to the Grand Jury Room at the Court House (A. 18, 24, 35) sometime between 5:30 and 6:30 p.m. (A. 24-25, 34-35).

Petitioner remained in the Grand Jury Room with the detectives, now rejoined by Jarmolowicz, for between fifteen minutes and an hour (A. 25-26, 35) while another neighborhood friend of his, Robert Stopford, was brought in and tested on the polygraph (A. 18, 35-36, 68). (A. 35-36, 160.) Then "we confronted . . . Monks with Stopford at approxi-

mately 6:30 p.m. and in Monks' presence Stopford repeated that Monks had told him about the Weiss assault.[37] There was no answer from Monks. He just lowered his head onto the table." (A. 18; see also A. 36, 79-80, 82, 94.) This confrontation took place in the Grand Jury Room, in the presence of DeSimone, Ventimiglia, Meola and Jarmolowicz. (A. 19.)[38]

Stopford remained in the Grand Jury Room "[j]ust a few minutes." (A. 36.) After he left, DeSimone "interrogated [petitioner] . . . for approximately a half hour." (A. 36.) Both Ventimiglia and Jarmolowicz were close enough to hear this interrogation. (A. 54, 77, 86.) It is best conveyed in DeSimone's own words:

> "Q. Mr. DeSimone, at any time in this questioning did you have a father and son talk with William Monks? A. I did, sir. Well, it was an interrogation—you might characterize it as such.
>
> "Q. What did you say to him? A. Well, in essence I told him, . . . one of the first things I said to him, I said, 'Willy, don't man me.' Every word out of his mouth was, 'Man, man, man, man.' And then I said, 'Look me in the eye, Will. Honest people look each other in the eye when they are telling the truth.' And, incidentally, it was in a low tone of voice and Mr. Jarmolowicz was sitting no more than two feet away from me, from us. We were all in a huddle. I said, 'Will, I believe you committed this crime. If you didn't do it, don't admit it, don't tell me you did, but if you

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[37] See Appendix C, para. A(2), *infra*.

[38] At a later point in his testimony, Detective Ventimiglia appears to forget that the Stopford confrontation occurred at this time. (A. 24-26.)

did, Will, tell me the truth,' and then I went into various things such as, 'Willy, if you did do it you can fool everybody but you can't fool God and you can't fool yourself,' and I carried on, I went into various aspects of the case, the facts of what Stopford had told us, of what Ogg had told us, his general demeanor throughout and the early investigation up here in the Shelter, and I truthfully told him that, 'You yourself admitted without me asking you a thing—'[39] . . . and then it carried on into other sort of fatherly talk, if he did do it, confess; if he didn't do it, 'I don't want you to confess it.'

"Q. What exactly was said during this so-called fatherly talk? A. Well, that general conversation. . . . There was one other little phase. I said, and I don't know exactly how I worded it, but it was in essence, 'If you did it, confess it, you will feel better for it and everyone in general—' I can't think of the exact words but I went over the entire interrogation—when I am sitting talking to someone heart to heart I can do a better job than I can do here.

"Q. How long did this heart to heart talk take? A. I should judge twenty minutes, a half hour or less.

"Q. And it was after this heart to heart talk that he told you this story? A. No. Then I told him, I said, 'Willy, no one is going to speak to you at all. Go over and sit in that corner and you search your

[39] The reference is to petitioner's statement during his interrogation on February 18, that it was snowing on the night of the Weiss assault. (See pp. 17-19, *supra*.) The omitted portion of DeSimone's testimony, indicated by the ellipsis in the text next following, is DeSimone's description of the February 18 interrogation.

conscience, Willy." I am going to go out for food. What do you want to eat?' and I took down his order, what he wanted to eat, and I said, 'Sit over there now and just search your conscience and think of what you want to do,' and then I left." (A. 41-43; see also A. 77-78, 86.)

But DeSimone's promise that no one would speak to the petitioner was not kept. While DeSimone and Meola went out for food (A. 78, 86-87), petitioner was brought back into the interview room and "put on the machine again" (A. 179) by Mr. Arthur (A. 179, 258-262, 264-265). This new, fully Miranda examination and interrogation began at about 7:30 p.m. (A. 258), and lasted for approximately a half hour (A. 262). It is the only one of Mr. Arthur's face-to-face sessions with the petitioner that the record describes in any detail.

How the session began is not stated. At some point, however, Mr. Arthur showed petitioner a key. Petitioner claimed that he had never seen it before, and Mr. Arthur informed petitioner that petitioner knew this was the kind of key that was on Miss Goldstein's person. (A. 262, 264-265.) Petitioner said nothing. (A. 265.) In his testimony Mr.

Detective Leonard DeSimone[*] appealing to the fact he wants his conscience and to relieve himself of the truth, that he would feel better and that he would certainly be a credit to himself. (A. 78.) Detective Meola also heard DeSimone tell petitioner to "search his conscience." (A. 86.)

[*] It is unclear whether, in this testimony, Detective Vantuyglio means that petitioner was in the interview with Mr. Arthur for a half hour prior to DeSimone's return (see text, infra), or whether the half hour including the period when DeSimone was absented with petitioner. The entire sequence of events, and the details of petitioner's interviews first with Arthur and then with DeSimone (text, infra), make the former construction more likely. (See A. 78-79.)

Arthur first says that he had not previously asked petitioner about this key (A. 58), but later admits that petitioner had been asked about the key and had denied knowing it was like Chambers's (A. 689). Now Mr. Arthur categorically stated, on the basis of the polygraph test, that petitioner did know the key was like Chambers's. (*Ibid.*) He did not give petitioner a chance to deny that assertion because "I had given that chance to him previously." (*Ibid.*)

> "... I said that he knew that this was the type of key that was in Miss Chambers's purse and he did not say anything, and then I talked to him anywhere from about one minute to maybe two minutes and I used the words, 'you did hit her, didn't you?' and he nodded his head affirmatively, and then I asked him some other questions and he didn't say anything, and I again used the question to the extent that I asked him if he did hit her and again he nodded his head affirmatively, and I asked him some other details, and at this time he spoke for the first time in probably five minutes and said he wanted to talk to Mr. DeSimone and tell him the story." (A. 58.)

Although Mr. Arthur had previously asked petitioner whether he was involved in the Chambers case, this was the first indication given to petitioner that he was. (A. 58.) It came at about 8:30 p.m. (A. 57.) Arthur immediately sent out to call for DeSimone (A. 59, 57), who was hastily summoned from the local store (A. 36-37, 43). DeSimone returned to find petitioner and Arthur still in the anteroom.

[illegible] (A. 60-61.)

(A. 89, 96, 97, 133.) Arthur said that petitioner wanted to talk to DeSimone alone, and then Arthur left. (A. 43, 97, 135, 136.)[*] DeSimone said "very well," and shut the door. (A. 136.)

> "I turned to him and I said, 'Yes, Willy?' and he said, 'I want to tell you the truth, I will tell you the whole story.' I said, 'All right, Willy, start right from the beginning.'" (*Ibid.*)

Petitioner then confessed that he had committed the attack on Miss Grandison. (A. 134-135, 136-138.) DeSimone and Ventimiglia testify that the confession was completed in ten or fifteen minutes. (A. 89, 97.)[**] However, it is plain that petitioner told the details of his story under prompting and questioning by Detective DeSimone. (A. 136-138.) DeSimone at some point "ran out" into the Grand Jury Room, returned with a sketch of the site of the Grandison assault, and thereafter had petitioner indicate on it the places to which he referred in his confession. (A. 135-137.)

DeSimone next took petitioner back to the Grand Jury Room, where, together with the three detectives, Arthur and Jaramillo (A. 89, 96), he was permitted to eat (A. 36, 37) a dinner consisting of coffee or milk, a sandwich and a piece of pie (A. 88, 110, 116). No one talked with petitioner during dinner; but, when the meal was finished, DeSimone interrogated him again for between fifteen

[*] Ventimiglia, however, appears to believe that Arthur was in the conference with DeSimone and petitioner. (See A. 97.)

[**] DeSimone fixes the hour at 5:30 p.m. (A. 134), but this appears to be a mistaken reference to petitioner's later repetition of the Grandison confession to the several detectives in the Grand Jury Room. (See text, *infra*.)

minutes and a half hour. (A. 37-38.) At 8:46 p.m.,* petitioner made a detailed confession of the Giambra attack (A. 20) in the presence of DeSimone, Ventimiglia, Meola, Arther and Jarmolowicz (A. 19, 154-155).

The detectives then sent for a stenographer (A. 38) and for the prosecuting attorney (A. 129-130). The prosecutor came into the Grand Jury Room and talked with petitioner (A. 129-130, 151.) The stenographer arrived sometime shortly before 10:30 p.m., at which time petitioner was moved into another room—variously described as a judge's chambers (A. 27-28) and a court reporter's office (A. 9)—for the transcription of formal confessional statements. (A. 27-28.)

Between 10:45 and 11:30 p.m. petitioner's formal confession to the Weiss attack was transcribed. (A. 7, 11, 86, 106.) It was taken down by a court reporter (A. 7) who was instructed by the detectives to transcribe nothing but the questions and answers (A. 11). Detective DeSimone asked the questions. (A. 20, 106-110.) The reporter did not record the conversation in shorthand, but typed the questions and answers directly on the typewriter. (A. 10.)

* There is some confusion as to this hour, although Ventimiglia states it categorically (A. 20). It is consistent with his statement that petitioner emerged from his private session with Arther and DeSimone in the anteroom at a little after 8:00 (A. 26-27). But DeSimone testifies that 8:46 was the time of petitioner's private conversation with Arther (note 11 *supra*), and that thereafter they ate dinner, not finishing until 9:30 p.m. (A. 38-39). The 9:30 hour is improbable, since after dinner (1) Monks repeated his confession during questioning of 15 minutes to a half hour (text, *supra*), (2) a stenographer was called for, who did not arrive for a half hour to an hour (A. 38), and (3) Monks was taken to another room for the transcription of his formal confession (A. 27). The formal confession began at 10:45 p.m. (A. 7, 86, 106.)

This confession was taken in the presence of Prosecuting Attorney Joelson, one Captain O'Brien (whose name is not mentioned earlier), Detectives DeSimone, Ventimiglia and Meola, and Mr. Jarmolowiez. (A. 7-8, 10-11.) After its conclusion, there was a half-hour break during which coffee might have been brought in or the reporter might have been preparing the statement for signature by the attendant witnesses. (A. 11-12.)[8] Throughout the half-hour, petitioner and all of the persons just mentioned remained in the room. (A. 11.) Then, between midnight and 1:00 a.m.,[9] petitioner's formal confession to the Giambra attack was taken in the same fashion and in the presence of the same officers and officials. (A. 8, 9-11, 86.) Both statements were formally witnessed by Joelson, O'Brien, DeSimone, Ventimiglia, Meola and Jarmolowiez. (A. 84; Exhibits 85, 86.)

However, Detective Edmond appears also to have been in the room toward the conclusion of the interrogation. He testifies that while petitioner was reading over and signing his statements, Edmond was also reading a copy. Edmond noticed a reference to a leather jacket worn on the night of the Giambra offense and asked petitioner where it

[8] The indecisiveness in the text is that of the reporter, testifying below, who said that he could not recall exactly what was going on during the half hour. Perhaps petitioner was given a glass of milk during this period. His confession in the Giambra matter, completed at 1:00 a.m., recites among the concluding questions and answers that petitioner had a glass of milk "[a]bout ten minutes ago." (A. 111.) On its face this seems to assert that petitioner was given milk during the taking of his one-hour statement, but it may mean that he had milk ten minutes before the statement began.

[9] The confession itself recites its completion at 1:00 a.m. But a notation "1:30 a.m." appears on a map used in taking the statements, and DeSimone testifies that he made the notation "after we had completed both statements." (A. 151.)

was. Petitioner directed Edmond to the first floor rear hallway of his home, where Edmond shortly thereafter recovered the jacket. (A. 155-156.)

> "And with that there was an autopsy picture lying face down. It was used previously in the questioning but it hadn't been seen by him. It was the autopsy picture which shows the two blows to the scalp.
>
> " . . . It was lying face down on the table. We had not showed that to him so he looked over at the picture and he said, 'Can I see how hard I hit her?'
>
> "And with that I gave him the picture and he studied the picture. . . ." (A. 156.)

Then, after 1:00 a.m. on February 27, DeSimone and Jarmolowicz returned petitioner to the Children's Shelter. (A. 114.)

At 9:00 or 9:30 the same morning (A. 114, 134, 156), petitioner was again brought from the Shelter to the Court House. (A. 20-21.) At the prosecutor's office, Detective Edmond showed him the black leather jacket which Edmond had obtained at petitioner's home during the night. Edmond asked if it was the jacket that petitioner had worn "that night," and petitioner said it was. (A. 156.) Then DeSimone, Ventimiglia, Mesdar Jarmolowicz and one Sergeant Garrity, a police photographer, drove petitioner back to the East Side of Paterson. (A. 21.) During a trip that lasted between a half hour and an hour (A. 134), petitioner reenacted first the Weiss and then the Gramhra assaults, while Garrity photographed him in various poses. (A. 21, 44-48, 120-122, 130-134; Exhibits S-7 to S-18.)

On February 28, Detective DeSimone again saw petitioner apparently at the Children's Shelter. The detective

showed petitioner a metal sample, but petitioner said that it was not like the weapon he had used. He described the weapon. (A. 115.) Later the same day, petitioner saw his mother (A. 116; Tr. 111, 72-73), for the first time since his arrest (see text, *infra*).

On March 1, DeSimone, Edmond and Jarmolowicz brought petitioner another metal sample. Petitioner described the differences between the sample and the weapon. He drew a sketch of the weapon which DeSimone had him sign and which was admitted into evidence below. (A. 115-116; Exhibit S-20.) On the same day, delinquency petitions were filed in the juvenile court, charging petitioner with the Weiss and Giambra offenses. (A. 3, 4.)

On March 2, DeSimone, Edmond and Jarmolowicz again questioned petitioner (A. 125-126), who now told a new and different story about his means of disposition of the weapon (see Appendix E, paras. A(3), B(3), *infra*).

On March 8, the juvenile court first appointed counsel for petitioner. He saw his lawyers that same day and immediately repudiated his confessions.[11]

b. The Nature of Petitioner's Detention and Interrogation

We come now to the quality of the experience that this 15 year old petitioner underwent during the days and hours preceding his confession.

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[11] Uncontradicted defense testimony at A. 117, 205.

i. *Incommunicado confinement; police presence*

We have seen that petitioner was in custody throughout the period from 1:00 a.m. on February 16, 1957, until he confessed on February 26 and 27. (Pp. 16-17, *supra*.) During this period, he saw no member of his family, no lawyer (except the Prosecuting Attorney), no friend (except during his "confrontations" with Ogg and Stopford), and no friendly or supportive figure (except the Probation Officer, Jarmolowicz, to whom we shall return, *infra*). (A. 78.)[49] Neither the interrogating detectives nor Jarmolowicz at any time asked petitioner if he would like to see his mother or his father. (A. 71, 96.) Neither the detectives nor the probation officer told him he could see a lawyer. (A. 71, 96.) The Superintendent of the Children's Shelter where he was confined never communicated with petitioner's parents or asked petitioner whether he might want to see his parents. (Tr. 111, 74.)[50]

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[49] The reference in the text is to the testimony of Detective Ventimiglia. It is corroborated by uncontradicted defense testimony that during the entire period of his confinement, petitioner saw no member of his family (A. 102), no attorney (*ibid.*), and no friends save Ogg and Stopford when he was "confronted" with them (*ibid.*). As we have seen, counsel were appointed for him ten days after his confessions, on March 8, 1957. (Note 48, *supra*.)

[50] Questioned about visiting regulations at the Shelter, the Superintendent did say that the practice was to send out a letter to the parents of a child who was in detention notifying them of the visiting days and hours. "That would be on Thursdays and Sundays from one to three, and there were, of course, exceptions made where the family could not get here on those particular days." (Tr. 111, 76.) But there is no testimony that this notice was sent out in every case or in petitioner's case; and petitioner's mother testified unqualifiedly that she did not receive any notice or know that he was in custody until she read of it in the newspapers. (Tr. 111, 183-185.)

Yet both the police and the juvenile probation authorities knew that petitioner's mother had been trying to find him. Her uncontradicted testimony establishes the following facts:

Petitioner had been missing from his home about six weeks prior to his arrest. On the day after he disappeared, January 8, 1957, she reported his absence to the police and also to the probation department. She was assured that he would be picked up and brought home. Subsequently, she made several additional calls to the probation office, and one call and one visit to the police. (Tr. III, 182-183.) Yet she was never notified of her son's apprehension during ten days following his arrest, and she learned that he was in custody only after the newspapers printed the story of his confessions. (Tr. III, 183-185.) Detective Ventimiglia confirms that the police made no efforts to contact petitioner's parents. (A. 74.)

On the other hand, petitioner saw no lack of policemen during the interrogative process. He was repeatedly questioned in the presence of Detectives DeSimone, Ventimiglia and Meola, as well as Probation Officer Jarmolowicz—except when he was put "on the machine" by the polygraph expert, Mr. Arther. At the time of his formal confessions, he was additionally attended by the Prosecuting Attorney and Captain O'Brien, and, toward the finish, by Detective Edmond. The following day, DeSimone, Ventimiglia, Meola, Jarmolowicz and a police photographer escorted him on a round of reenactments. (See A. 7-8, 9-11, 12, 14, 19, 21, 52, 92-93, 155-157.)

Doubtless, with the exception of a few stray questions, all of the interrogation was done by three men: DeSimone,

Ventimiglia and Arther. (See A. 92-93.) But the sheer weight of police presence surrounding the boy, particularly during the all-day, all-night episode of February 26, was imposing. Throughout that entire day, from 10:00 a.m. until 1:00 a.m. the next morning, he was never out of the presence of several police officers, except in the privacy of the polygraph room. (A. 23, 30-39, 53-54, 64, 68-69, 80, 89, 91.) Throughout that day, no one spoke a word to him except his interrogators. (A. 68-69.)

Asked if petitioner were ever left alone on February 26, Probation Officer Jarmolowicz testifies:

> "Yes. That was later in the afternoon. I believe after he had made an admission he was left alone.
>
> " . . . Somewhere late in the afternoon he was given a rest. I would say it lasted for about 40 minutes." (A. 89.)

This forty-minute period—spent in the corner of the Grand Jury Room in which several detectives and Jarmolowicz were also present (A. 91)—was the only sustained period during the day when petitioner was not the focus of interrogation. (*Ibid.*; see A. 89-94.)

ii. *Persistence and pressure of the interrogation*

The general strategy and character of the interrogation on February 26 were described by Detective Ventimiglia:

> " . . . [W]e were working with Mr. Arther. He would put the boy on the machine and certain things were done such as the bag [the Weiss pocketbook] and certain reactions . . . [A]nd then we would be guided by whatever his findings were on the machine." (A. 73.)

For example (in Detective DeSimone's words):

> "I might have said Willie, how do you account for the fact that you were shown five pocketbooks and you got a reaction only on one pocketbook . . . [W]hen he got to the Weiss pocketbook it showed a reaction." (A. 147.)

This procedure explains petitioner's trips in and out of the Grand Jury anteroom. In all, he was put "on the machine" a total of nine times on February 26 (A. 58-59, 61-62), for testing on different aspects of the Weiss and Giambra cases (A. 62). Mr. Arther testifies that the duration of each polygraph test proper was between one minute and two-and-a-half minutes (*ibid.*); but, of course, Arther himself alternated testing periods with bouts of interrogation. (See A. 55-57, 59-61.)[51]

With regard to the polygraph, Arther told petitioner "probably on two occasions" that "if he was telling the truth this would indicate that to me and if he was not telling the truth, it would indicate that to me also." (A. 59.) DeSimone built upon this point, telling petitioner "no more than two or three times" that the machine showed he was not telling the truth. (A. 146-147.) All of the interrogators agree that petitioner began by denying involvement in either the Weiss or the Giambra matters and persisted for a time in the denial. (A. 60, 71-72, 93-94.) But he was repeatedly accused of involvement (A. 72) either on the basis of the polygraph (A. 56-57, 60-61, 147) or on the basis of his admissions, February 18, that he knew it was

[51] Petitioner's testimony is consistent with Arther's but more explicit. He explains that Arther would run a test, then question him for 10 or 15 minutes, then run another test. (A. 201.) Petitioner says that the questioning tired him rather than the tests themselves. (*Ibid.*)

showing on the date of the Weiss assault (A. 28, 42, 73) or on the basis of his supposed admissions to Ogg and Stopford (A. 42, 73).[52, 53] Jarmokowicz described this portion of the interrogation as follows:

> "Q. And prior to 4:00 or 4:30 the boy had been interrogated on and off for either six or six and a half hours, had he not? A. With intervals of eating and testing, yes. [Note: There was one meal prior to 4:30; "testing" refers to the polygraph.]
>
> "Q. And during that period of six or six and a half hours, were there not occasions when he denied that he had done these things? A. Yes.
>
> "Q. Weren't questions put to him— A. Yes.
>
> "Q. (Continuing.) —and he denied complicity? A. If I recall, yes, he was denying it.
>
> "Q. And there were many denials, were there not? A. Well, I would say no more than four or five, three to five, because the questions were not constantly asking for admission. They were leading questions up to a certain point and then a question would be asked him and he would deny it." (A. 93.)

Later, after petitioner made his 4:30 p.m. confession to the Weiss affair and then recanted it within the hour, his

[52] "And I also said to him that he had just been taken into custody for grabbing bags and that we were satisfied that there was some indication by his own statement that he knew something about this Weiss matter and that our investigation in talking to Stopford and Ogg indicated that he was responsible for the Weiss attack." (A. 73.)

[53] The detectives also led petitioner to believe, incorrectly, that they had the pocketbook that was taken from Miss Weiss. (See A. 16, 18.) What they had was another pocketbook identical to it. (A. 16; Tr. I, 50, 52.)

interrogation was continued. "[H]e admitted it and he denied it, then he re-admitted it." (*Ibid.*) Still later, after he had finally confessed to the Giambra matter, the interrogation was continued. (A. 37-38.) As in all such cases, it is difficult to know exactly how much questioning petitioner underwent. But by the time of his formal statements late that night, DeSimone was able to say of the details of the offenses that: "[w]e had gone over that time and time again." (A. 152.)

DeSimone's characterization of the interrogation is that it was "on and off." (A. 148.) The atmosphere of this "on and off" sort of questioning appears more fully in a description by Jarmolowicz:

> "Q. And would it be correct to say that he was constantly interrogated regarding these matters? A. No.
>
> "Q. Well, were there any times when there was no discussion about these cases? A. No. What would happen is the officers would go off at a distance and give themselves a series of questions to ask him and before they came back maybe 5, 10, 15 minutes would pass, perhaps more.
>
> "Q. But the boy would be aware, would he not, of the fact that they were just preparing for the questions? A. Well, I assume so. He had nowhere to go.
>
> "Q. Could you properly say, therefore, that this was a continuing process of interrogation from approximately 10:00 o'clock in the morning until the statements were made? A. Well, I wouldn't say it was a continuing direct questioning. I would say it would be an episode of questioning with intervals of rest for the boy because the officers concerned wanted to compare

notes with themselves and probably cover points that the other wasn't thinking of.

"Q. Well, referring to these intervals when the officers would compare notes, how many of them were there? A. Well, I think almost always Officer Ventimiglia and Vincent DeSimone were there.

"Q. When they conferred or in preparation for these little conferences did they indicate to the boy that they were going to leave him alone? A. No. They would just simply cease questioning him and the boy sat in the chair and I believe the officer sat at a table facing him there. It was a long table about this size (indicating).

"Q. And the boy would be told either expressly or impliedly to remain where he was, is that right? A. He was never told. He just remained there.

"Q. But would the officers withdraw from the room? A. Only to go to the bathroom.

"Q. Or did they go over to the corner of the room to confer? A. Yes.

"Q. Whispered conversations? A. Yes.

"Q. These took place in the presence of the boy? A. Yes. I took advantage of one of those episodes to ask the boy that if he really knew anything about these offenses that he should unburden himself and search his conscience and that he would feel much better if he told it because he would have it to live with the rest of his life, the sort of counseling I would give any boy in any juvenile court.

"Q. These episodes wherein these conferences between the police officers took place lasted for approximately five minutes or ten minutes, is that correct? A. I think the longest was about ten to fifteen minutes.

"Q. You wouldn't— A. And even there there were interruptions where we just sat there.

"Q. Was it your understanding that while these things were going on that they were just preliminary to further interrogation? A. Oh, yes. I knew what the purpose of these interrogations were.

"Q. So you wouldn't properly characterize these intervals as rest periods, then, would you? A. Well, he was resting insofar as the fact that he wasn't answering questions, which was to a degree a rest for him.

"Q. Well, they were really interruptions in the interrogation, weren't they? A. That's it.

"Q. Very brief interruptions? A. Yes." (A. 89-91.)

One striking instance brings home with particular clarity the impression that was made on petitioner's mind by these sorts of "whispered" conferences during his "rest" periods. That is the matter of the autopsy photograph of Giovanna Giambra's head, which Detective Edmond testifies "was used . . . in the questioning, but . . . hadn't been seen by [petitioner]." (A. 156.) Asked how the photograph was used in the questioning, Detective Edmond replied:

"Well, they were asking about the number of blows struck and they referred to it.

". . . [T]hey asked him how many blows he struck and, of course, they would check the picture when he said two blows." (A. 157.)

For the purposes of this Statement, we may accept the proposition that, "of course," three experienced detectives, who have been on a homicide case for three months, have to look at an autopsy photograph in the presence of a

fifteen year-old suspect whom they are questioning in order to refresh their recollection that two blows were struck. Nevertheless, this use of the photograph communicated its message to petitioner. We are told that after he confessed he "looked over at the picture and he said, 'Can I see how hard I hit her?'" (A. 156.)

iii. *Petitioner's physical and mental state*

Petitioner had no sleep at all between the early morning hours of February 26 and 1:00 a.m. Februrary 27 following his confessions. (See A. 91-92.) He was fed three meals during the day: breakfast at the Children's Shelter at 7:00 a.m.;[54] lunch shortly after noon, dinner sometime between 7:30 and 8:45 p.m. (see *Chronology, supra.*)[55] Lunch and dinner were each coffee or milk, a sandwich and pie. (A. 88-89, 110, 114.) Apparently between his two formal confessions or during the second of them he had a glass of milk. (See note 46, *supra.*)

Jarmolowicz describes petitioner as relaxed and alert during the interrogation of February 26-27 (A. 91-92) and as appearing "relieved" after he made his confessions (A. 98-99). Throughout most of the day, there was "a tension of some sort, but not unduly so" (A. 99), and even this tension appeared relieved when petitioner confessed (*ibid.*). Petitioner read his transcribed confessions carefully, and made five or six corrections on them. (A. 165-167.)

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[54] Uncontradicted defense testimony, at A. 102-103.

[55] Jarmolowicz appears to testify that petitioner ate at noon, 7:00 p.m., and again at 9:00 p.m. (A. 88.) This seems another example of the probation officer's testimonial inaccuracy. (See notes 30, 33, *supra;* text, *infra.*) Petitioner's confessions themselves recite that he had three meals during the day, including breakfast (A. 110, 114), and this is consistent with the *Chronology, supra.*

DeSimone's description indicates somewhat greater volatility and swings of mood on petitioner's part:

> "... [T]hroughout the day he was bright, alert, at times very belligerent and surly, cursed many times. In intervals he would make outbursts when we would confront him with certain things and every other word was 'Man, man, man,' until the point when I had the talk that has been referred to so often as a fatherly talk. Thereafter he was calm and relaxed. As a matter of fact, after I had taken the second story, the second oral story, I summoned Mr. Joelson, and Mr. Joelson came in and Mr. Joelson sat there and had a talk with him, he was bright eyed and wide awake, and I believe Mr. Jarmolowicz will bear out that he seemed to lose that tenseness in the middle of my chat with him and for the first time didn't act like a tiger. As a matter of fact, he even threatened bodily injury to Mr. Arther at times.
>
> "...
>
> "... [T]hen he would relax and be semi-cooperative and then he would get belligerent again and surly, but in his conversation every other word was 'man, man, man'." (A. 129-130.)

iv. *Lack of warning to petitioner of his rights to counsel and to remain silent*

The police testimony is plain that petitioner was never warned of his rights to counsel or to remain silent until just before the taking of his formal confessional statements late at night on February 26. Ventimiglia and Jarmolowicz testify explicitly that the first constitutional cautions they heard given to petitioner came at the outset

of his transcribed confessions at 10:30 p.m. and midnight on the 26th. (A. 22-28, 71, 95-97.)[56] DeSimone's testimony is somewhat more vague, and is probably inconsistent with that of Ventimiglia and Jarmolowicz.

DeSimone admits that the first time he warned petitioner of his rights was between 9:30 and 10:30 p.m., after petitioner had finished dinner, undergone a half-hour of post-dinner interrogation and "related certain facts." (A. 37-39.) By these "facts", it is plain, DeSimone means to refer to petitioner's second oral confession of the Giambra attack. (See A. 19-20, 154-155.) Thereafter (A. 38), DeSimone said:

> "William, we are going to ask you to give us a voluntary statement. You may do so or not, just as you wish. Everything you say must be of your own free will without any promise of reward or threats having been made to you, and, as you know, it will be taken down in writing and anything you say may be used against you in a trial. Do you agree to give such a statement?" (A. 38.)[57]

When petitioner said "Yes, sir, Mr. DeSimone" (*ibid.*), "then arrangements were made to bring in a stenographer" (*ibid.*). DeSimone's disagreement with Ventimiglia and Jarmolowicz relates only to whether any sort of warning was given to petitioner before the stenographer arrived.

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[56] Ventimiglia or Jarmolowicz was present during all of petitioner's interrogation except the polygraph sessions with Mr. Arther and the private interview with DeSimone at about 8:00 p.m. (A. 23, 53-54, 64, 68-69, 85-94.) Concerning Jarmolowicz's careless statement, at one point in his testimony, that petitioner said he understood his rights, see text, *infra*.

[57] Petitioner replied that he did agree. (A. 38.)

All of the officers concur that the first warning came, at the earliest, following petitioner's afternoon confession of the Weiss matter and following his oral confessions of the Giambra matter both to DeSimone alone, and then to the detectives, Arther and Jarmolowicz.

At the outset of the transcribed confessions, DeSimone asks the questions: "Do you agree to give a statement?" and "Is this statement to be given by you voluntarily without any threats or promise of reward knowing that it will be used against you in a trial?" (A. 106.) (See also A. 22-23, 95, 110.) The questions are answered in the affirmative by petitioner. (*Ibid.*) No other constitutional warnings were given to petitioner throughout the interrogation prior to his confessions of February 26-27.[58] Prior to the reenactments of February 27, petitioner was given no further warnings of any sort. (A. 22.)[59]

v. *The protection given petitioner by Probation Officer Jarmolowicz*

We come now to the role played during petitioner's interrogation by Probation Officer Jarmolowicz, whose protective guardianship was relied upon by both courts below

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[58] The concluding questions of each formal confession also elicit petitioner's statements that he has not been threatened or abused or offered any reward for his confession. (A. 110, 114.)

[59] There is no evidence in this record that petitioner was aware of his rights without being told. The officers knew that he was a fifteen year-old boy. (A. 58, 71.) Prior to his present apprehension, he had been a juvenile court probationer (A. 199, 203-204), but no indication appears in the transcript of the nature or frequency of his involvement with the law. A psychiatric report that is included in the record does state that, as of November 1956, petitioner had been involved in nothing more than one instance of theft of a jacket and flashlight from an automobile, one instance of window-breaking, and some misconduct at school.

in sustaining the voluntariness of petitioner's confessions. (See pp. 53-55, *infra.*) Chester Jarmolowicz was a principal probation officer of the juvenile court in February, 1957. (A. 98.) He had fifteen years experience in the probation department, and had worked for ten years chiefly with juveniles. (*Ibid.*)[60]

On February 18, 1957, when Detective DeSimone secured the permission of Juvenile Court Judge Schamach to interrogate petitioner, the judge instructed Jarmolowicz "to be there with him to look out to see to it that he was not browbeaten or abused in any way or pushed to any extreme." (A. 98.)

> "I was instructed by Judge Schamach to be with the boy at all times when the boy was being questioned by the detectives. . . . I was instructed to be there because I was to see to it that the boy was not abused in any way or taken advantage of or exhausted or placed in a position where he might say something that his physical condition probably would not allow him to say otherwise." (A. 158.)

Several points require emphasis here.

First, as we shall see, Mr. Jarmolowicz recurred again and again in his testimony to the very limited character of his protective role as he understood it. He was there only to see that petitioner was not "browbeaten" or "abused" or "physically exhausted." (A. 87, 158, 163.) His testimony shows no sensitivity whatever to the subtlety of the forces that can make a fifteen year old child's confes-

[60] He had a college degree in pharmacy and had taken some non-credit sociology courses. (A. 98.)

sion involuntary. Indeed, it shows no sense of purpose to prevent the extraction of an involuntary confession, in a federal constitutional sense, so long as the petitioner was not physically ill-treated.

Second, Jarmolowicz fell considerably short of his assignment in even its most mechanical aspect. He was not in fact "with the boy at all times when the boy was being questioned by the detectives."[61] To the contrary, the record is plain that (1) Jarmolowicz was not present during any of the polygraph tests and incidental interrogation of petitioner by Mr. Arther either on February 21 or on February 26 (A. 27, 33, 52, 87, 159-161); (2) Jarmolowicz was not present during the critical tête-à-tête between petitioner and Detective DeSimone, in the Grand Jury anteroom, that occasioned petitioner's first confession of the Giambra offense (A. 19, 26-27, 161); and (3) Jarmolowicz was not present during petitioner's conveyance to the East Side of Paterson by three detectives on February 26 (A. 85, 160), for the purpose of reenactment of the Weiss assault.

Third, and more important, there is not a suggestion in the record that Jarmolowicz ever did a single thing, or spoke one single word, throughout those extended proceedings that he *did* attend, either to limit the power of the detectives to interrogate petitioner entirely as they pleased, or to support petitioner's will against erosion under such

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[61] The record does contain a few general professions by the interrogating officers that "Mr. Jarmolowicz was with us throughout the entire investigation." (A. 30; see also A. 13-14 and Jarmolowicz's own testimony at A. 85.) But all of these generalizations are immediately qualified by admissions that Jarmolowicz was not present during any of the interrogative episodes next mentioned in text.

interrogation.[62] There is no suggestion, either, that the detectives viewed Jarmolowicz as an actual or potential restraining influence. Therefore, Jarmolowicz could only have been of any assistance to petitioner on the assumption that his presence conveyed some sense of security or protection to petitioner's mind. But that assumption finds no support in this record. For, though Judge Schamach may have told Jarmolowicz that his role was to protect petitioner, neither the judge nor Jarmolowicz is shown to have informed petitioner of this protective role. For aught petitioner knew, Jarmolowicz was just another of his interrogators.[63]

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[62] We think we may fairly put aside the circumstance that Jarmolowicz once said to petitioner: "William, if you didn't do this, don't admit it." (A. 201.) (It is interesting that this episode was elicited from the petitioner through a leading question by the court, although no evidence of record had previously referred to any such conversation between petitioner and Jarmolowicz. (*Ibid.*) Jarmolowicz was present throughout the trial, apparently in his capacity as a probation officer, to assist the court. (See A. 6, 7.)

[63] Petitioner did know that Jarmolowicz was a probation officer, and he was told that Judge Schamach had assigned Jarmolowicz to stay with him. (A. 200.) But there is no evidence he was told that the probation officer was supposed to be supportive or protective, or different in any way from the other officers of the law who were trying to convince him to confess.

It is true that the court below elicited from petitioner a "yes" answer to the question: "And you know these probation officers try to help the probationers, do you not?" (A. 200.) With the utmost respect, we suggest that an answer of this sort to a question of this sort, asked by a juvenile court judge of a juvenile over whom the judge has complete dispositive power, is entirely lacking in probative value. The judge simply asked for the juvenile court mystique, and got it. But even if the answer is taken at par value, the substance of the awareness it asserts is too banal and vapid to do service for an understanding, clearly brought home to the petitioner, that Jarmolowicz had any effective role to play in shielding him from overreaching by the detectives. Whatever "help" a juvenile is likely to anticipate that he will receive from a juvenile court probation officer, it surely does not include assistance in refusing to answer questions that policemen make clear they want answered.

Fourth, one of the obvious evils of *incommunicado* detention and interrogation is that they deprive an accused of any impartial witness or observer of the substance and circumstances of an alleged confession. Jarmolowicz singularly failed to play the role of impartial observer. There were parts of the interrogation which he did not hear (A. 86-87, 158-159), "because I was instructed very carefully by the court, by the Judge, to be there only to see that the boy was not browbeaten or exhausted in any way which would be unfair to him" (A. 87). And again: "I wasn't really listening to the exact testimony because I was just there to see that he was not browbeaten or shouted at." (A. 163.) For example, Jarmolowicz could be of no help on the vital question whether petitioner had volunteered the contents of the Weiss pocketbook, or whether these were—as petitioner claimed—first described to him by the police. (A. 87.)

What is even more striking is Jarmolowicz's persistent ignorance of or indifference to the truth regarding the circumstances of petitioner's interrogation that are relevant to the issue of voluntariness of his confession. For example, he initially testifies that he first saw petitioner at about 10:00 a.m. on February 26 (A. 85), then admits that he picked him up that morning between 9:00 and 9:30 a.m. (A. 88, 160). He says that petitioner's confessions were taken "about somewhere after 10:00 p.m." (A. 85-86.) In fact, of course, one was taken between 10:45 p.m. and 11:30 p.m.; the other between midnight and 1:00 a.m. (See *Chronology, supra.* He testifies that the polygraph test administered on February 21 ran 30 or 40 minutes. (A. 159.) A detective's notes reflect that it ran three times that long. (A. 52.) Jarmolowicz testifies that the first

polygraph session with Mr. Arther on February 26 ran: "I don't think it was more than twenty minutes, perhaps thirty minutes that I recall." (A. 160.) Police testimony puts the length of the session at one and a half or two and a half hours. (A. 30-31.)

Jarmolowicz first testifies that he was with the petitioner at all times after 10:00 a.m. on February 26 except during the East Side excursion (A. 85), and then admits that he was also not with petitioner during the polygraph tests (A. 87, 160). If this is heedlessness, it is heedlessness of a high order; for the same error is repeated at a later point in his testimony, in a fashion that surprises even the prosecutor:

> "Q. [the Prosecuting Attorney]. And the rest of the 26th, was he ever questioned outside of your presence? A. No.
>
> "Q. Well, I call your attention to the subsequent lie detector tests. Were you present at the lie detector tests? A. I wasn't in the room but I was waiting outside that room.
>
> "Q. And when the boy spoke to Detective DeSimone alone on the 26th, where were you? A. I was in the other room." (A. 161.)

Questioned as to whether petitioner was warned of his constitutional rights, Jarmolowicz at one point volunteers the loose phrase that petitioner "said . . . he understood his rights." (A. 95.) Cross-examination concerning the phrase makes unmistakably clear that it is a complete fiction of Jarmolowicz's creation, having nothing to do with what petitioner in fact said. (A. 96-97.) For another example of Jarmolowicz's testimonial inaccuracy, see note 55, *supra*.

The point emerges unmistakable from this record. In the interrogation room, Jarmolowicz, together with the prosecutor and four policemen, formally witnessed petitioner's confessions. (A. 84, 94-95; Exhibits S-5, S-6.) At trial on the issue whether those confessions were coerced, Jarmolowicz was a witness inveterately hostile to petitioner. (See, for example, A. 99.) In view of his role, he could hardly have been otherwise. For, however he might have conceived that role initially, by the time of trial he must have realized that a finding of coercion would amount to an adjudication of his own dereliction.

vi. *Testimonial character of the confessions*

By the time petitioner was brought to the Court House for "testing" and interrogation at 10:00 a.m. on February 26, he was already a suspect. (A. 28.)[44] By the time his formal confessions began to be transcribed at 10:45 p.m. that night, if not much earlier, the detectives were positive that he was guilty. The formal confessions had only one purpose: to provide judicially cognizable evidence of his guilt.

Every circumstance surrounding the formal confessions points to this conclusion: —the method of transcription, the involvement of the prosecutor, the number of attending witnesses. Prior to the beginning of the question-and-answer sessions, also, DeSimone had prepared sketches of the sites of the Weiss and Giambra assaults, with directions. These were given petitioner to consult (in De-

[44] The referenced page refers only to the Weiss matter. However, what was true for Weiss was obviously equally true for Giambra. The investigating detectives had conceived the two offenses as a package from the outset of their interrogation of petitioner. (A. 98, 100, 127-128.)

Simone's words) "as he testified" (A. 151; see also A. 163), so as to make his story self-contained and understandable. (A. 149-154, 161-162.) While he was making his formal statements, he was not asked to point out matters on the sketches. ". . . [I]t was all clear to us. We had gone over that time and time again." (A. 152.)

> "He had explained minutely to me. The only thing I was trying to clear up was for the directions so he could clearly describe it on paper. I understood it. He had pointed it out to me, but for someone reading that statement I wanted to make that clear exactly what he was telling me. . . ." (*Ibid.*)

c. Findings of the Courts Below Regarding Petitioner's Confessions

The juvenile court made virtually no specific findings of fact relative to the circumstances under which petitioner's confessions were obtained. It concluded generally that the confessions were not "put . . . into William's mouth" by the detectives (A. 214), and that they were "voluntary" (A. 213) and "taken under circumstances that were fair" (A. 217). The major underpinnings of these conclusions were (1) that petitioner read his confessions carefully and made a number of corrections on them before signing them (A. 214); (2) that, following his confessions to police, he also made admissions to his mother and to an inmate of the Children's Shelter (see Appendix C, paras. (B)(1), (2) *infra*) (*ibid.*); and (3) that "[t]he Court assigned Mr. Jarmolowicz to sit with William and observe him and protest his rights. . . . The Court reposed this confidence in Mr. Jarmolowicz, and I have confidence in him as well, so

that I know there was no imposition upon William Monks during this questioning" (A. 213).

> "The circumstances that he was [in the Courthouse] . . . for a rather long period . . . on the 26th of February is perhaps unfortunate, but it was explained due to the various interruptions and waiting for the stenographer." (A. 213.)

> "I don't say that I completely approve of the incident, all of the incidents with respect to the lie detector test, but I don't think in this case that any harm was done to the rights of the defendant. . . . " (A. 217.)

The Superior Court opinion recites in general outline the uncontested chronology of petitioner's arrest, interrogation, confessions and reenactments. (A. 225.) It finds that petitioner was "advised by the officers to tell the truth and unburden his conscience" (*ibid.*), and that "at no time was [petitioner] . . . informed that he could see an attorney or his parents" (*ibid.*). "While his parents or an attorney were not present, their presence was not sought. . . ." (A. 227.) "During the hour-long wait for the reporter to arrive [i.e., between 9:30 and 10:30 p.m. on February 26], the police told [petitioner] . . . that he was being asked to give a voluntary statement and that it could be used against him," and he "agreed to give the statements." (A. 225.)

The Superior Court finds that Probation Officer Jarmolowicz was assigned to "protect [petitioner] . . . against any impropriety by the police" and that he "was present throughout the police interrogation and when [petitioner] . . . gave his written signed statements . . . ," except that he was absent during the trip to the East Side of Paterson on the afternoon of February 26 and when peti-

tioner "was alone with the polygraph operator." (A. 225-226.)[65] Like the juvenile court, the Superior Court relies heavily on the fact of Jarmolowicz's presence in sustaining the voluntariness of petitioner's statements. (A. 226-227.) It also relies upon his testimony that petitioner "was not mistreated, was alert and relaxed throughout the day, and the questioning was carried on in brief sessions with frequent breaks." (A. 226.)[66] Finally,[67]

> ". . . The questioning was not prolonged at any one time and there were frequent breaks. The initial interrogations [on February 18] were not only brief but pertained primarily to the unrelated purse snatchings for which defendant had originally been taken into custody.
>
> "The statements were taken late in the evening [on February 26] but this was due to defendant's withholding his willingness to give them until after dinner and the delay in getting the stenographer, who did not arrive until 10:30 P.M. . . . " (*Ibid.*)

(The court's characterization of this latter delay as "hour-long" (A. 225) inferentially finds that the stenographer was not summoned until 9:30 p.m.)

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[65] This finding is plainly erroneous insofar as it suggests that Jarmolowicz was present during the private conversation between Detective DeSimone and petitioner in which petitioner first confessed to the Giambra assault. All of the detectives and Jarmolowicz agree in testifying that Jarmolowicz was not present at this conversation.

[66] This last phrase appears to be the Superior Court's characterization of Jarmolowicz's testimony set forth at pp. 40-42, *supra.*

[67] The Superior Court also makes the non-controversial factual finding that petitioner was not physically abused. Concerning its conclusion that he was not "subjected to long and gruelling interrogations by relays of police officers" (A. 227), see pp. 64-65, *infra.*

Summary of Argument

I.

On the whole record, petitioner's confessions must be held involuntary. Plainly, they were extracted under pressures calculated to overbear the will of a fifteen year-old child. Petitioner steadfastly resisted those pressures until they broke him. *Haley* v. *Ohio*—by comparison, a mild case of coercion—requires reversal.

II.

Petitioner's present sentence of imprisonment for the maximum term of his natural life depends upon the factual finding that he committed the specific offense of first degree murder. His guilt of this offense was neither litigated nor adjudicated at his trial. It was *determined* at a post-trial proceeding of which he had no notice, and in his absence. Due process does not countenance any such procedure.

ARGUMENT

I.

Petitioner's Confessions Were Involuntary.

We have set out the undisputed facts surrounding petitioner's confessions in detail so that this Court may make its traditional "independent examination" of the question of voluntariness. *Ashcraft* v. *Tennessee,* 322 U.S. 143, 147-148 (1944); *Clewis* v. *Texas,* 386 U.S. 707, 708 (1967). The constitutional standard to be used in that examination is also traditional.[68] "The question in each case is whether a defendant's will was overborne at the time he confessed." *Reck* v. *Pate,* 367 U.S. 433, 440 (1961); see *Lynumn* v. *Illinois,* 372 U.S. 528, 534 (1963). As Mr. Justice Frankfurter put it:

> "Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." (*Culombe* v. *Connecticut,* 367 U. S. 568, 602 (1961)).

Were this petitioner's confessions "the product of an essentially free and unconstrained choice"? That question needs be answered, strictly, only with regard to the formal, signed confessions taken between 10:45 p.m. on February 26 and 1:00 a.m. February 27, and the reenactments of the

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[68] By force of *Johnson* v. *New Jersey,* 384 U.S. 719 (1966), no issue is presented here under *Escobedo* v. *Illinois,* 378 U.S. 478 (1964), or *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

following day. For, if these were involuntary, petitioner's adjudications of delinquency cannot stand notwithstanding the earlier confessional evidence. *Payne* v. *Arkansas*, 356 U.S. 560, 567-568 (1958); *Culombe* v. *Connecticut*, 367 U.S. 568, 621 (1961); *Lynumn* v. *Illinois*, 372 U.S. 528, 537-538 (1963); *Gallegos* v. *Colorado*, 370 U.S. 49, 55 (1962). However, we think that the Court may also properly decide the question of the voluntariness of the oral confessions in the Giambra matter made between 8:00 p.m. and 9:30 p.m. on February 26. Petitioner has now been incarcerated for almost thirteen years on the basis of the Giambra charge. If the State of New Jersey has, as we submit, no constitutionally admissible evidence to connect him with that charge, we hope that the Court will say so now, and decisively.[69]

On the whole record, all of petitioner's confessions following 8:00 p.m. were plainly involuntary—the extractions of police-applied pressure that overbore petitioner's will. No other conclusion is possible consistent with *Haley* v.

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[69] This Court has frequently ruled upon the admissibility of more than one contested confession, the products of a single, ongoing interrogative process, even though reversal of a state conviction might have been predicated upon finding only one of the confessions involuntary. *E.g.*, *Reck* v. *Pate*, 367 U.S. 433 (1961); *Culombe* v. *Connecticut*, 367 U.S. 568 (1961); *Clewis* v. *Texas*, 386 U.S. 707 (1967). Here, as in those cases, petitioner may be subject to reprosecution in the Giambra matter. See *Johnson* v. *State*, 18 N.J. 422, 114 A.2d 1 (1955); *In re Smigelski*, 30 N.J. 513, 154 A.2d 1 (1959). Since the New Jersey statute discussed in Part II of this brief makes his reprosecution in the Weiss matter impossible, we see no occasion for the Court to consider the voluntariness of the oral Weiss admissions. Petitioner has already been imprisoned far longer than the maximum allowed by New Jersey law for the Weiss offense. We consider the formal Weiss confession herein because it is not realistically isolable, in the course of petitioner's interrogation, from the oral Giambra confession immediately preceding it and the formal Giambra confession immediately following it.

Ohio, 332 U.S. 596 (1948); and our legal argumentation might well stop with the citation of that case. However, because the Court "'cannot escape the responsibility of making [its] . . . own examination of the record'" herein, *Brooks* v. *Florida,* 389 U.S. 413, 415 (1967), we proceed to note the several factors that make petitioner's an extreme case of coerced confession.

First, petitioner was a fifteen year-old child at the time of his detention and interrogation.

> "Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces." (*Haley* v. *Ohio,* 332 U.S. 596, 599 (1948).)

See also *Gallegos* v. *Colorado,* 370 U.S. 49, 54 (1962); *In re Gault,* 387 U.S. 1, 45 (1967).

Second, petitioner was detained without access to family, friends or counsel, for more than ten days prior to the interrogation of February 26. He was taken into custody by officers who woke him from his sleep at 1:00 a.m. and interrogated him "on and off" through noon of the following day. Then, without judicial hearing, he was placed in detention subject to the pleasure of his interrogators. It is true that he was questioned on only three days: February 18 (the Monday following his Saturday arrest), February 21, and February 26. But the officers made quite clear that this was because of the limited availability of the polygraph operator following the initial interrogation on the

18th. The message to the imprisoned boy was obvious: he would be held and questioned at police convenience until he confessed.

This point is an important one, to which the Court's coerced-confession decisions have attached considerable weight. *E.g., Chambers* v. *Florida,* 309 U.S. 227, 240 (1940); *Haynes* v. *Washington,* 373 U.S. 503, 514 (1963). When an accused is being detained and interrogated without judicial commitment, without a fixed date for court appearance or release, with no point in time that he can be assured will mark the end of the interrogation, and with no way to end it himself except to give the answers that are demanded by the police, even intermittent questioning imports an ominous threat. The police may be willing to take their time; but detention of this sort implies that they have both the purpose and the power to prolong the interrogation until the suspect breaks down and confesses.

> "In such an atmosphere, questioning that is long continued—even if it is only repeated at intervals, never protracted to the point of physical exhaustion—inevitably suggests that the questioner has a right to, and expects, an answer. This is so, certainly, when the prisoner has never been told that he need not answer and when, because his commitment to custody seems to be at the will of his questioners, he has every reason to believe that he will be held and interrogated until he speaks." (*Culombe* v. *Connecticut,* 367 U.S. 568, 575-576 (1961).)

This fifteen year-old petitioner, who had already been subjected to one session of all-night questioning immediately following his arrest, had no way of knowing when

the questioning would resume or how long it would continue. So far as he could tell—and so far as anyone can tell from this record—the police could take him from the Children's Shelter for interrogation whenever they pleased. Police power over him was apparently unlimited; and there was no one to tell him of its legal limits, or to help him enforce them, or to help him resist the demands of the police for self-incriminating statements.

Throughout ten days of detention and three sessions of interrogation, neither the detectives nor Probation Officer Jarmolowicz ever told him that he could see his parents or a lawyer. They never contacted his parents; nor did the Superintendent of the Children's Shelter. This was so although both the police and probation authorities knew that petitioner's mother was looking for him. He had been missing from home for a time prior to his arrest; his mother had called the probation department several times; she had called the police and gone to the police in person; and she had been told that he would be returned to her when found. In fact, she learned that he was in custody only after the newspapers reported that he had confessed.

Third, petitioner was never told that he had a right to remain silent, or to refuse to answer his interrogators' questions. See *Culombe* v. *Connecticut,* 367 U.S. 568 (1961); *Haynes* v. *Washington,* 373 U.S. 503 (1963); *Davis* v. *North Carolina,* 384 U.S. 737 (1966); *Clewis* v. *Texas,* 386 U.S. 707 (1967). Rather, repeated bouts of questioning proceeded on the premise that answers from him were demanded. We know that, on one occasion, he sat silent for at least five minutes, while Mr. Arther continued to question him. (See p. 29, *supra.*) Interrogation of this sort is eloquent that silence will not be accepted. It is true that, as in *Haley* v.

Ohio, 332 U.S. 596 (1948), petitioner was told, after he had twice confessed the Giambra attack orally but before his formal statement was taken, that the police were asking him to make a voluntary statement which he could make or not, as he pleased. See also *Greenwald* v. *Wisconsin*, 390 U.S. 519, 520 (1968). This Alice-in-Wonderland warning was obviously both too little and too late.

Fourth, on February 21 and again during hours of questioning on February 26, petitioner adamantly refused to admit his guilt in the face of repeated inquiries, accusations and "confrontations." See *Clewis* v. *Texas*, 386 U.S. 707 (1967). He finally admitted guilt in the Weiss assault, but told a factually inaccurate version of it. The police cross-questioned him on an aggravating detail—the use of a weapon—after brushing aside his inquiry whether that did not make the offense more serious. They did not cross-question him on his assertion, which the Weiss assailant must have known to be wrong, that he had taken a package from Miss Weiss. Within an hour, petitioner had recanted this confession in its entirety. So the interrogation resumed.

There followed denials, silence in the face of the Stopford confrontation, silence in the face of accusations by Arther, silence in the face of blandishment by DeSimone to "search his conscience," and then confession of the Giambra matter—again with significant factual inaccuracies. All of this twisting and turning, admission, retraction, re-admission, and finally confession which the juvenile court below found to be inaccurate in some details, paints an unmistakable picture of grudging submission under pressure. That is consistent also with DeSimone's description of this adolescent's "outbursts when we would confront him with things"

and his swings of mood: "then he would relax and be semi-cooperative and then he would get belligerent again and surly."

Behavior of this sort is obviously something other than "an essentially free and unconstrained choice" to confess. Simply, the boy resisted as long as his capacities allowed, and then he broke.

Fifth, his interrogation on February 26 would have been overpowering even to an adult. He was up for breakfast at 7:00 a.m.; questioning began at 10:00 a.m.; and his statements were completed fifteen hours later at 1:00 o'clock the next morning. During this entire time, he was in the presence of the interrogating detectives—usually two or three of them—and saw and spoke to no one else. He did not sleep at all, and had only one "rest" period, of forty minutes, during which an avowed halt was called to the investigation. His lunch and dinner were sandwiches, eight hours—that is, a full working day—apart.

During this fifteen-hour period, he was questioned, in familiar police terminology, "on and off." Two points emerge that pierce that rhetoric.

First, by the most conservative estimate of the police testimony, petitioner was actually being questioned for six and one half hours of the fifteen. This is twice as much interrogation as the total in *Haynes* v. *Washington*, 373 U.S. 503 (1963), and *Greenwald* v. *Wisconsin*, 390 U.S. 519 (1968), and twice as much as any single day's questioning in *Culombe* v. *Connecticut*, 367 U.S. 568 (1961).

Second, and more important, this record paints an extraordinarily vivid image of what is really involved in "in-

termittent" police interrogation. "On and off" suggests surcease and perhaps relaxation. But petitioner had nothing of the sort. His "off" periods brought him no relief from either police presence or police pressure.

During these intervals between episodes of questioning, he was never freed for one moment of the strains of the ongoing police effort to get him to confess. While the questioning was "off," he was waiting for the results of the polygraph examinations of Ogg and Stopford in the next room, or being "confronted" by them, or watching the detectives confer in whispered conversations preparatory to resuming their cross-questioning of him, or sitting in a corner with instructions to "search his conscience," or waiting for a stenographer to come to transcribe his incriminating statements. He was outside the doors of the two rooms where his inquisition occurred on only one occasion: for one hour while he drove with three detectives in a car to the scene of the Weiss assault for a reenactment.

In this context, we invite scrutiny of the Superior Court's conclusion that petitioner "was not subjected to long and gruelling interrogations by relays of police officers." (A. 227.) Unremitting involvement in fifteen hours of police investigation seems long enough; active interrogation during one and a half times the number of hours that this Court sits during any day seems gruelling enough; and "relays" has no meaning if it does not describe interrogation on the polygraph by Arther, then interrogation by DeSimone and Ventimiglia, re-interrogation by Arther, then again by the detectives. "Relay" questioning is an effective instrument of extracting a confession because it keeps the suspect off balance. Petitioner was in and out of the

anteroom, "on the machine" and off, confronted and questioned, all day. He could never know what to expect next. After DeSimone's "heart to heart" conversation with him, the detective told him that no one would question him while he sat and searched his conscience. Then DeSimone left and within a few minutes the boy was taken back into the anteroom and put on the polygraph.

The polygraph machine itself is not simply a background prop in these events. Although no description of the contraption appears in this record, its physical attributes are sufficiently well known so that the Court can notice them and take account of the impression they would create on a fifteen year-old boy. We are told by John E. Reid, Mr. Arther's employer, that:

> "... [t]he Reid Polygraph ... is essentially a pneumatically operated mechanical recorder of changes in blood pressure, pulse, and respiration, supplemented with a unit for recording the G.S.R. [galvanic skin reflex]. An additional unit permits a recording of certain muscular activity, in particular, muscular pressure exerted by the subject's forearms, thighs, or feet.
>
> "The Polygraph ... is attached in the following manner to the person being tested. A pneumograph tube, with the aid of a beaded chain, is fastened around the subject's chest or abdomen. A blood pressure cuff, of the type used by physicians, is fastened around one of the subject's arms. A set of electrodes is attached to the palmar and dorsal surfaces of the hand or fingers of the other arm. No attachments are required for the muscular activity recording unit." (Reid & Inbau, Truth and Deception: The Polygraph ("Lie-Detector") Technique, 4 (1966).)

A work by Mr. Reid's co-author describes the effect of the polygraph when it is used in conjunction with interrogation:

> "Although the psychological effect of the mere presence or use of a lie-detector is sometimes sufficient to induce a confession from a guilty subject, a period of skillful interrogation after the completion of the tests is usually required before a confession is forthcoming. The examiner's task in this respect is by no means a simple one. It usually requires considerable patience and effort, despite the assistance he derives from the psychological effect of the instrument itself." (INBAU, LIE DETECTION AND CRIMINAL INTERROGATION, 80 (2d ed. 1948).)

There is no question but that petitioner had the requisite skillful interrogation before his confession was forthcoming. He had the look-me-in-the-eye-Willy and the honest-men-look-each-other-in-the-eye-when-they-are-telling-the-truth treatment.[70] He had the you-can't-fool-God treatment.[71] He had the you'll-feel-better-if-you-tell-the-truth

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[70] "*(4) Inability to Look Interrogator 'Straight in the Eye'* . . . When a subject fails to look the interrogator 'straight in the eye,' . . . it is well to comment upon these characteristics as indications of a disturbed mental condition inconsistent with the subject's protestations of innocence." INBAU, LIE DETECTION AND CRIMINAL INTERROGATION, 110 (2d ed. 1948).

[71] "In playing upon this potential weakness, if the subject happens to be a religious person discuss with him the tenets of his particular creed. Mention to him the fact that his religion becomes meaningless unless he tells the truth with regard to the offense in question." *Id.*, at 118-19.

treatment[72] and the search-your-conscience treatment[73] (this latter from Jarmolowicz as well as DeSimone) and the I-only-want-the-truth treatment.[74] He had accusations based on prior admissions, on his lie detector responses, on the Ogg and Stopford stories.[75] He had confrontations with Ogg and Stopford. And he had periods of waiting, watching the detectives whispering across the room, watching them inspect an autopsy photograph of Miss Giambra's head. If these devices are the accouterments of an adolescent's "free and unconstrained choice" to confess, then neither the choice nor the Constitution that guarantees its freedom has much meaning.

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[72] "The expression 'It's the only decent and honorable thing to do' appears to constitute somewhat of a challenge for the offender to display some evidence of decency and honor." *Id.*, at 118.

[73] "3. *Urge the subject to tell the truth for the sake of his own conscience.* . . . In urging or advising an offender to tell the truth the interrogator must avoid expressions which the courts of his state may consider objectionable on the ground that they constitute illegal promises or threats. However, by speaking in generalities such as 'for the sake of your conscience,' . . . the interrogator can remain within permissible bounds." *Ibid.*

[74] "(1) The interrogator should avoid creating the impression that he is an investigator seeking a confession or conviction. It is far better for him to appear in the role of one who is merely seeking the *truth*." *Id.*, at 102 (emphasis in original).

[75] "A. *Display an Air of Confidence in the Subject's Guilt*

"By an 'air of confidence' we do not mean a supercilious or bullying attitude, but rather one which will convey to the subject the impression that the interrogator is 'sure of himself' and that he 'means business.' As part of this impression, of course, the interrogator must give no indication that he is being influenced by what the subject may state in behalf of his innocence; and this should be so even when the interrogator actually realizes the reasonable implication of possible innocence in some fact or evidence presented by the subject." *Id.*, at 108. Consider, in this connection, the detectives' failure to call to petitioner's attention the obvious incorrectness of his statement that he had taken a package from Miss Weiss.

Sixth, petitioner was deprived of the presence of any impartial witness to his confessions. He was thereby vitally handicapped in any effort to challenge either their content as reported by the police or the police version of the circumstances under which they were made. This kind of deprivation is, of course, one of the most damaging consequences of any practice of closed-door interrogation. See *Culombe* v. *Connecticut,* 367 U.S. 568, 574 (1961); *Gallegos* v. *Colorado,* 370 U.S. 49, 50-51 (1962); *Davis* v. *North Carolina,* 384 U.S. 737, 741 (1966). But its impact in petitioner's case was uncommonly harmful.

As we point out at pp. 12-13, *supra* and in Appendix B *infra,* there is not and has never been a respectable scintilla of non-confessional evidence identifying petitioner as the assailant in the Weiss and Giambra cases. This circumstance, coupled with New Jersey law's requirement of corroboration of confessions, made the details of petitioner's confessional statements absolutely vital to the prosecution's case. The Superior Court found sufficient "corroboration in the Giambra case" (A. 227) on the principal ground that petitioner's "knowledge of the particulars of each offense was too great to be mere guesswork or fantasy" (*ibid.;* see A. 227-228).

The details of petitioner's confessional statements which purportedly demonstrate his "knowledge of the particulars" are analyzed in Appendix C *infra.* Two vital details appear only in his oral statements. Other details do appear in the formal, transcribed confessions; but petitioner's testimony is hopelessly at odds with that of the police on the question whether knowledge of these details was volunteered by petitioner or communicated to him through the officers' questioning. On these decisive factual ques-

tions—whether he used certain phrases at all, and whether others were suggested to him by the interrogating detectives—the case boiled down to a swearing contest between petitioner and the police. It is striking and not a little sinister, therefore, that the court reporter summoned to transcribe petitioner's formal statements did not record them stenographically, but was specifically instructed by the detectives to type only the dictated questions and answers. No impartial witness was admitted into the interrogation chambers.

Probation Officer Jarmolowicz neither could nor did play the role of impartial witness. *Cf. In re Gault,* 387 U.S. 1, 35-36 (1967). By his own admission, he conceived that the substance of petitioner's conversations with the police was none of his business. Even as regards the circumstances of the confessions that were relevant to the question of their voluntariness, Jarmolowicz was persistently uninformed or heedless of the truth. (See pp. 50-52, *supra.*)

His participation in the process of the interrogation itself was equally unprotective. Never once did he restrain the police, intervene in petitioner's behalf, or signify in any way that he might or could do either of these things. What he did was, first, to "ask the boy that if he really knew anything about these offenses that he should unburden himself and search his conscience and that he would feel much better if he told it because he would have it to live with the rest of his life" (A. 90); and, second, to witness petitioner's confession. If he was on the premises to protect petitioner, petitioner knew and was told nothing of it. We think it obvious that the point would not have been inferable from Jarmolowicz' behavior.

Finally, this is a classic case of a trial reduced to an appeal from the police station. There is no mistaking the purpose of the formal, signed confessions taken from petitioner between 10:45 p.m., February 26, and 1:00 a.m., February 27, or of the reenactments later on the morning of the 27th.[76] These were carefully directed, elaborately staged evidence productions. They were in no sense investigatory, or any part of the police function of crime detection. They were not designed to clear a crime, identify a criminal, understand a criminal technique, or even puzzle out the fine details of *modus* of an incompletely understood offense. "It was all clear to us," said DeSimone. "We had gone over that time and time again." (A. 152.) This time the questioning was purely testimonial, its goal: the extraction of incriminating depositions.

We submit that the confessions and reenactments so extracted were inadmissible against petitioner consistently with due process of law. That is no novel submission. Rather, as we have said, *Haley* v. *Ohio,* 332 U.S. 596, decided in 1948, squarely controls it. Cognizant of the point that Fourteenth Amendment adjudication in confession cases "requires more than a mere color-matching of cases," *Reck* v. *Pate,* 367 U.S. 433, 442 (1961), we have discussed petitioner's case on its own bottom. But having done so, we must conclude that every aggravating incident of Haley's interrogation was mirrored in petitioner's treatment by the Paterson police; while petitioner's case also presents coercive incidents—ten days of detention without

[76] We think that nothing more needs be said regarding these reenactments. If petitioner's formal statements on the night of the 26th-27th were involuntary, so were the reenactments the next morning. See *Reck* v. *Pate,* 367 U.S. 433 (1961); *Clewis* v. *Texas,* 386 U.S. 707 (1967).

access to a friendly presence, use of the polygraph machine, admonitions to "search your conscience," among others—which make Haley's ordeal seem mild by comparison.[77] With all due respect to the courts below, their approval of the methods by which petitioner's incriminating statements were taken is an incomprehensible regression to the era of the third-degree. This Court must reverse the judgment of the Superior Court or turn the clock back twenty years.

II.

Petitioner's Sentence of Imprisonment for the Maximum Term of His Life, Based Upon Factual Determinations Made in His Absence and Without Personal Notice or Hearing, Deprives Him of His Liberty Without Due Process of Law.

Petitioner was tried in December, 1957 on allegations that he was "a delinquent child, in that . . ., while in the commission of an assault and robbery, he struck Giovanna Giambra . . . on the head, with a blunt instrument on repeated occasions, which resulted in her death." (A. 3.) Under the prevailing New Jersey law, it made no difference whether this was a charge of first degree murder, second degree murder, robbery, aggravated assault, or some lesser offense included within one of these; and at his trial it made no difference which offense was shown. Proof of

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[77] Petitioner's case is far more extreme than *Gallegos* v. *Colorado*, 370 U.S. 49 (1962), in which this Court also held an adolescent's confession involuntary. Gallegos was not subjected to petitioner's fifteen-hour inquisition or any of its coercive incidents; he was advised of his constitutional rights; and his mother was aware that he was in custody. Most important, Gallegos confessed immediately at the time when he was taken into custody, while petitioner persisted in denying guilt until interrogation wore him down.

any crime by a juvenile would support an adjudication of delinquency; and upon *any* adjudication of delinquency the juvenile could be committed for an indeterminate term—that is, for life imprisonment, subject to release at the discretion of the parole board. (See pp. 5-6, *supra*.) Accordingly, no issue was litigated or determined at petitioner's trial with regard to the nature of the specific offense involved in the Giambra matter.

In January, 1958, just that issue became determinative of whether petitioner could legally be confined for a maximum term of five years or for a maximum term of his natural life. Legislation enacted on January 6 provided that juvenile commitments should not extend beyond a juvenile's twenty-first birthday, except in homicide cases. In such cases, where "the adjudication of delinquency [was] . . . predicated upon an offense which, if committed by a person 18 years or over, would constitute any form of homicide," the maximum term of confinement was to be the maximum fixed by law for the offense. (See N.J.S.A., § 2A:4-37 (1969 Cum. Supp.), pp. 79-80, *infra*.) This was a life term for first degree murder. (See N.J.S.A., § 2A:113-4 (1953), p. 80, *infra*.) The new statute was retroactive. *In re Smigelski*, 30 N.J. 513, 154 A.2d 1 (1959).[78]

Accordingly, the Superintendent of the Reformatory to which petitioner had been committed asked the committing court to determine "'what crime was committed . . . in order to assist . . . in fixing his maximum sentence.'" (A.

[78] More exactly, *Smigelski* held the statute retroactive at the option of the juvenile. But, for the reasons stated in *In re State in the Interest of Steenback*, 34 N.J. 89, 99-101, 167 A.2d 397, 402-403 (1961), no juvenile could rationally opt *not* to have the statute retroactively applied to him.

221.) After conferring with court-appointed trial counsel, but without personal notice to petitioner and in his absence, the juvenile court determined that the Giambra offense was first degree murder. (A. 222; see p. 9, *supra*.) We submit that such a determination deprived the petitioner of the balance of his sixteen year-old life without due process of law.[79]

The basis of this submission is the fundamental proposition that "notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." *Cole* v. *Arkansas*, 333 U.S. 196, 201 (1948). This Court has recently held that proposition applicable to sentencing, and has held that when a convicted man is brought before the court for a determination of sentence depending upon "a new finding of fact . . . that was not an ingredient of the offense charged," *Specht* v. *Patterson*, 386 U.S. 605, 608 (1967), "[d]ue process requires that he be present with counsel, have an opportunity to be heard, . . . and to offer evidence of his own" (*id.*, at 610). The same holding is implied, at the least, in *United States* v. *Behrens*, 375 U.S. 162 (1963).[80]

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[79] This issue was not raised in these terms below. But petitioner's counsel did put the legality of petitioner's present life sentence in issue in the Superior Court, and that court expressly ruled not merely that the sentence was legal, but that it was constitutional as against an *ex post facto* objection. (A. 229; see pp. 10-11, *supra*.) Petitioner's present formulation of the claim—that the retroactive application of the statute without a hearing on the factual issues raised by such an application, violated due process—is sufficiently akin to the *ex post facto* argument that we think this Court can properly hear it.

[80] Although *Behrens* relies upon the Federal Criminal Rules in condemning sentencing *in absentia* and without a fair opportunity

Here, a "new finding of fact" was obviously called for as the basis of petitioner's sentence to life imprisonment. That finding was his guilt of the crime of first degree murder, a question never previously in issue in his case. Under New Jersey law, it is plain that petitioner might have raised factual defenses against a first-degree murder charge that were not available to him as against the other charges which might equally have supported his adjudication of delinquency and life sentence under pre-January-1968 law. The most significant of these was a contention of diminished capacity,[21] based on psychiatric evidence.[22] Since peti-

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to be heard, there are several indications in the Court's opinion that its decision has constitutional underpinnings. First, it recites that the rights it is vindicating are "recognized" by the Rules, rather than created by them. (*Id.*, at 165.) Second, it points out that any other construction of the applicable Rules and statutes would "make necessary a constitutional decision" (*id.*, at 166 n. 4) whose consequence is hardly left to the imagination. Third, it appears to approve the decision below (*id.*, at 164), in *Behrens* v. *United States*, 312 F.2d 223 (7th Cir. 1962), which rests on constitutional grounds.

[21] New Jersey law recognizes that psychiatric states which render a defendant incapable of the thought processes implied by the mental elements of particular offenses may be shown as a basis for finding the defendant not guilty of those offenses. *E.g.*, *State* v. *Di Paolo*, 34 N.J. 279, 168 A.2d 401 (1961); *State* v. *Vigliano*, 43 N.J. 44, 202 A.2d 657 (1964); *State* v. *Conforti*, 53 N.J. 239, 250 A.2d 6 (1969) (per curiam). Indeed, the same rule applies with regard to intoxication, *e.g.*, *State* v. *Wolak*, 26 N.J. 464, 140 A.2d 385 (1958), or "any defect, deficiency, trait, condition, or illness which rationally bears upon the question whether [the required] . . . mental operations did *in fact* occur . . . ." *State* v. *Di Paolo*, *supra*, 168 A.2d at 409 (emphasis in original). And the rule applies to felony-murder cases, *State* v. *Sinclair*, 49 N.J. 525, 231 A.2d 565, 575 (1967), at least where the underlying felony is one—like robbery in *Sinclair* and allegedly in petitioner's case—which requires a specific mental state. On the other hand, as the cited cases indicate, petitioner could not have defended against a

tioner's mental state became an issue only with the passage of the 1968 enactment—and since it became determinative of the difference between a five-year commitment and a life commitment—he was entitled by due process to a hearing on that issue. *Cf. Panico* v. *United States*, 375 U.S. 29 (1963).

We think it can make no difference that the "new finding of fact" was required by new and ameliorative legislation which New Jersey chose to make available retroactively for the benefit of pre-1968 juvenile committees—except first degree murder committees. For present purposes, one may assume that New Jersey was not required to enact the statute or to give it retroactive application.[82] But when it did do these things, New Jersey thereby required a differentiation to be made between first degree murder cases and others; and a differentiation of this sort, involving new factual findings and entailing consequences of the most extreme sort, can hardly be thought to be exempt from the due process requirement of fundamental fairness. *Cf. Witherspoon* v. *Illinois*, 391 U.S. 510, 521 n. 20 (1968).

The elements of that requirement for a determination of this sort are spelled out in *Specht*, *supra*, and include, at the least, notice and the rights to be present and to be

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second degree murder charge—hence an adjudication of delinquency—on this ground.

[82] In its adjudication of delinquency and commitment, the juvenile court recommended psychiatric treatment for the petitioner. (A. 218, 219.)

[83] This assumption ignores the obvious federal constitutional claims available to a juvenile committed for a life term without regard to the nature of his offense.

heard. Because petitioner was not accorded these rights,[84] his present sentence of life imprisonment denies him due process of law.

Conclusion

The judgment below should be reversed.

Respectfully submitted,

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Counsel for Petitioner
Appointed by the Court

Of Counsel:

MICHAEL MELTSNER

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[84] These are not the sort of rights that petitioner's counsel could waive in his absence and without personal notice to him. See *Brookhart* v. *Janis*, 384 U.S. 1 (1966).

APPENDICES

APPENDIX A

Statutes Involved

N.J.S.A., § 2A:4-14 (1952)

2A:4-14. *Exclusive jurisdiction; juvenile delinquency defined; habitual offenders of the age of 16 and 17 years*

Except as stated in section 2A:4-15 of this title, the juvenile and domestic relations court shall have exclusive jurisdiction to hear and determine all cases of juvenile delinquency.

Juvenile delinquency is hereby defined as the commission by a child under 18 years of age

(1) of any act which when committed by a person of the age of 18 years or over would constitute:

a. A felony, high misdemeanor, misdemeanor, or other offense, or

b. The violation of any penal law or municipal ordinance, or

c. Any act or offense for which he could be prosecuted in the method partaking of the nature of a criminal action or proceeding, or

d. Being a disorderly person,

or (2) of the following acts:

e. Habitual vagrancy, or

f. Incorrigibility, or

g. Immorality, or

h. Knowingly associating with thieves or vicious or immoral persons, or

i. Growing up in idleness or delinquency, or

j. Knowingly visiting gambling places, or patronizing other places or establishments, his admission to which constitutes a violation of law, or

k. Idly roaming the streets at night, or

l. Habitual truancy from school, or

m. Deportment endangering the morals, health or general welfare of said child.

But the commission of an act which constitutes a violation of the provisions of chapters 3 or 4 of Title 39, Motor Vehicles, of the Revised Statutes, or of any amendment or supplement thereof, by a child of or over the age of 17 years, who is the holder of a valid license to operate a motor vehicle under the laws of this or any other state, shall not constitute juvenile delinquency as defined in this section.

N.J.S.A., § 2A:4-37 (1952)

[in force prior to January 6, 1958]

2A:4-37. *Disposition of juvenile offender*

The juvenile and domestic relations court on proper cause shown may:

a. Place the child on probation to the chief probation officer of the county upon such terms as the court may deem to be to the best interest of the child; or

b. Commit the child (1) to a public institution established for the care, custody, instruction and reform of juvenile offenders or to any other appropriate institution which is maintained by the state or the county or by any county or municipality in which the child shall reside or have a settlement; (2) to any other like institution, commitment to which may be authorized by law; (3) to the care, custody and control of the state board of child welfare, such commitment to have the same force and effect as a

commitment made to it under the provisions of chapter 138, of the Laws of 1951 (C. 30:4c-1 to 30:4c-40).

N.J.S.A., § 2A:4-37 (1969 Cum. Supp.)

[reflecting the amendment effective January 6, 1958, N. J. Laws, 1957, ch. 220, p. 765, § 1]

2A:4-37. *Disposition of juvenile offender*

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b. Commit the child (1) to a public institution established for the care, custody, instruction and reform of juvenile offenders or to any other appropriate institution which is maintained by the State or the county or by any county or municipality in which the child shall reside or have a settlement; (2) to any other like institution, commitment to which may be authorized by law; provided, however, that the time which any such child shall serve in confinement or on parole shall not extend beyond that date upon which the child attains the age of 21 years, except, that if the adjudication of juvenile delinquency is predicated upon an offense which, if committed by a person of the age of 18 years or over, would constitute any form of homicide as defined in sections 2A:113-1, 2A:113-2, 2A:113-4 and 2A:113-5 of the New Jersey Statutes then the period of confinement shall be indeterminate and shall continue until the appropriate paroling authority determines that such person should be paroled, but in such case the period of confinement and parole shall not exceed the maximum provided by law for such offense if committed by a person of the age of 18 years or over; (3) to the care, custody and control of the State Board of Child Welfare, such commitment to have the same force and effect as a commitment

made to it under the provisions of chapter 138, of the laws of 1951 (C. 30:4c-1 to 30:4c-40).

N.J.S.A., § 2A:113-4 (1953)

2A:113-4. *Murder; punishment*

Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after the consideration of all the evidence, recommend life imprisonment, in which case this and no greater punishment shall be imposed.

Every person convicted of murder in the second degree shall suffer imprisonment for not more than 30 years.

APPENDIX B

Summary of All Non-Confessional Evidence on the Issue of Petitioner's Identity as the Assailant in the Weiss and Giambra Matters

A. *Weiss Assault*

With regard to the Weiss assault, only one piece of non-confessional evidence points even vaguely in petitioner's direction. It was snowing lightly on the night of February 24, and an officer responding to the scene about a half hour after Miss Weiss was attacked found a set of footprints leading south from the place of the attack to the rear porch of a boarding house several blocks away, on the corner of 31st Street and 15th Avenue. (Tr. I, 62-64, 69-74.) One Robert Stopford, a sixteen-year-old friend of the petitioner (Tr. I, 30-31), testified that he had several times gone with petitioner to a first-floor bathroom in a boarding house at 31st Street and 15th Avenue. (Tr. I, 41, 48.) On one occasion, sometime in 1956, petitioner took Stopford to the boarding-house bathroom for the purpose of examining the contents of a purse that petitioner found in a back yard, and of dividing the money found in it. (Tr. I, 37-43.) This purse, the prosecution conceded, had nothing to do with the Weiss or Giambra case. (Tr. I, 42.) And the boarding house was in petitioner's neighborhood, within several blocks of his home. (See Tr. III, 170.)

The investigating officer never went north of the site of the assault, and so could not say whether the footprints he followed originated at that site or came through it before or after the time when Miss Weiss was attacked. (Tr. I, 70-71.) But, quite without regard to this problem, the entire line of evidence does not approach legally sufficient or rationally persuasive proof of petitioner's identity as the assailant of Miss Weiss.

B. *Giambra Assault*

In the Giambra matter, the non-confessional evidence of identity is slighter still. It consists of two pieces of proof. First, petitioner left his home sometime after 7:00 p.m. on the night of November 12, 1956 (A. 164; Tr. I, 66-67; III, 190-192.) Second, Miss Giambra described her assailant as wearing a dark leather jacket (Tr. III, 42); and petitioner owned a black leather jacket (Exhibit S-28).

This last aspect of the prosecutor's case is troubling in several regards. The investigating officer's trial testimony is that Miss Giambra spoke of a "dark" leather jacket, but the officer found himself tending to call it "brown" (See Tr. III, 42-43) because someone else told him that Miss Giambra had said "brown" (Tr. III, 45-46). And shortly after the Giambra attack, another officer had been at petitioner's house inquiring about a *brown* leather jacket. (Tr. I, 67.) Petitioner's black jacket was examined at the police lab (Tr. III, 70), but no scientific evidence was presented linking it to the Giambra offense or to any other. Because the jacket was found at petitioner's house by an officer whom petitioner had directed to go there after petitioner completed his confessional statements (A. 155-156), the admissibility of the jacket would seem to stand or fall upon the voluntariness of the confessions. See *Wong Sun* v. *United States*, 371 U.S. 471 (1963). But even if the evidence concerning the jacket were considered independent of the confessions and given it's utmost probative value, the prosecution's total non-confessional proof of petitioner's identity as the Giambra assailant remains so thin as to be legally and logically non-existent.

APPENDIX C

Summary of All Evidence of Confessions or Admissions by the Petitioner, Other Than the Confessions in Controversy*

A. *Weiss Assault*

1. One Harry T. Ogg, a seventeen year-old neighborhood friend of the petitioner (Tr. I, 15-18), testified that on a date which Ogg could not fix (Tr. I, 16, 19-20, 26-28), but which was the day following the assault on Miss Weiss (Tr. I, 16), petitioner discussed that assault with Ogg. Petitioner had told Ogg that he had snatched a purse; Ogg, while in a candy store with petitioner, saw a newspaper account of the Weiss affair; Ogg showed it to petitioner, who said "that is the one . . . he had taken" (Tr. I, 16). (Tr. I, 16-18.) Ogg told no one about this confession (Tr. I, 18-19), until he himself was later picked up and questioned by the police. (See p. 22, *supra*.) His trial testimony concerning it was fuzzy as to time and circumstances. (See Tr. I, 19-28.) A police officer, describing a police-arranged confrontation of petitioner with Ogg following petitioner's arrest, testified that Ogg said "Monks had told Ogg, if my memory is correct, and he even showed him some money, showed him some dollar bills." (A. 80.) Ogg's trial testimony makes no reference to this obviously salient point of a money display. And petitioner, at trial, denied making any confession at all to Ogg. (A. 190.)

2. Robert Stopford, a sixteen year-old neighborhood friend of the petitioner (Tr. I, 30-31), talked to petitioner a week after the Weiss assault (Tr. I, 31). Stopford was first incorrect and then fuzzy in dating this conversation. (Tr. I, 32-35.) Stopford said to petitioner "'Did you do

* The several confessions in controversy are enumerated at p. 13, *supra*.

that?' and he says, 'Yes.' I said, 'What did you do that for?' He says, 'I needed money,' and I says, 'What did you hit her with?' he says, 'A pipe.'" (Tr. I, 34.) Stopford meant to refer to the Weiss assault, but did not mention Miss Weiss in any way to petitioner; he asked only, "Did you do that?" (Tr. I, 35-36.) Stopford denied that petitioner was given to bragging, but admitted that he wanted to be a good fellow with the boys and talked about his exploits. (Tr. I, 40.) Petitioner also denied at trial having made any such admission to Stopford. (A. 180.)

B. *Grambera Assault*

1. After petitioner's arrest and during his investigation by police over a period of two weeks (see pp. 15-34, *supra*), he was detained in the Children's Shelter. One Richard Tallon was also an inmate of the Shelter at this time. (Tr. III, 28.) Tallon talked with petitioner in the shower room and asked him what the lie detector said. Petitioner "say it say yeah." (Tr. III, 28.) Tallon then asked petitioner if he really did it and petitioner replied "Yeah, man." (Tr. III, 28-29.) Tallon asked how he did it and petitioner "said he hit her with the pipe and took her pocket book, and she went to raise her hand and he thought she was waving at somebody and he hit her again." (Tr. III, 29.)

The date of this exchange is not clear. Tallon put it near the end of February. (Tr. III, 32, 36.) He first said he thought it was "after the first lie detector test" of petitioner (Tr. III, 28), but later said it was "the first lie detector admitted to this" (Tr. 37). Petitioner made no admissions in his first polygraph examination, February 21, 1957. His admissions came on February 26, the day that ended with the transcription of his formal confessions. Between the time of his admissions to the polygraph operator and the time of his formal confessions, petitioner was not returned to the Children's Shelter. Petitioner himself testified that his conversation with Tallon was after his formal confessions came to the police. (A. 188.) "Before I signed this here

confession. I told them I didn't do it, and after I signed it, I told them I did it. Q. Why did you tell them you did it if you didn't do it? A. I told everybody else I did it." (A. 171.) Obviously, on this record, the Fallon statement has not been shown to have been independent of petitioner's challenged confessions to the police.

2. As indicated at pp. 31-32, *supra*, petitioner signed formal confessions of the Weiss and Giambra assaults on the night of February 26, 1957. Shortly after 1:00 p.m., on February 28, petitioner was visited at the Children's Shelter by his mother and sister. (Tr. III, 72-73.) His mother asked him: "Billy, did you do this terrible thing?", and he nodded affirmatively. (Tr. III, 73.) His mother asked "Why did you do this?" and he shook his head as though he didn't know. (Tr. III, 73-74.) Asked at trial why he nodded when his mother asked whether he was guilty, petitioner testified: "Well, what could she do. I already signed the confession." (A. 170.)

This was the same answer given by petitioner when he was asked why he did not deny guilt during the reenactments of February 27. "I already told them. I already signed a confession. Q. Well, the next day Mr. Jarmolowicz was along, was he not, when you went around showing the investigators? A. What could he do. I signed a confession." (A. 169.)

3. On February 28, March 1 and March 2, 1957, petitioner had conversations with the police officers to whom he had made his formal confessions of February 26-27. These conversations concerned the nature of the weapon used by petitioner and his method of disposal of it and of a pocketbook. (A. 114-116, 125-126.) Petitioner's admissions at this time were fragmentary and have meaning only in the context of his earlier full and detailed confessional statements, of which the conversations between February 28 and March 2 are plainly declarative.

APPENDIX D

Description of Each Aspect in Which Petitioner's Confessions Are Consistent With the Material Circumstances of the Offenses

A. Weiss Assault

1. Petitioner said that it was snowing on the night of the Weiss assault. (A. 13, 72, 73, 108.) It was. (Tr. I, 62, 69.) But the police knew this fact at the time that they interrogated petitioner. (See A. 127.).

2. Petitioner said that he crossed the street diagonally in coming up behind Miss Weiss. (A. 14-15, 17, 66.) This conforms to Miss Weiss' description of the fashion in which she was approached by her assailant. (Tr. I, 49, 52-54.) But she had given that description to the police long before petitioner was interrogated. (Tr. I, 56.) Significantly, the term "diagonally" appears only in the police recitations of petitioner's oral confessions, where it may be a police interpretation of what petitioner said rather than anything he actually said. His formal confession conveys no notion that his approach to Miss Weiss was diagonal. (A. 102.)

3. Petitioner said that, after snatching the Weiss' pocketbook, he took it to the first floor bathroom of a boarding house at 23rd Street and 15th Avenue, entering the house by the rear door. (A. 15, 17, 107.) He identified the boarding house as one to which he had previously gone with Robert Stopford; and he said that, on one occasion, he and Stopford had gone into the bathroom to divide money from a purse. (A. 102.) As indicated in Appendix B, *supra*, Stopford testified that he had indeed gone to a bathroom in a boarding house at that intersection with the petitioner on several occasions (Tr. I, 37-43, 48), although his account of the proceeds from the purse differs markedly

from petitioner's (Tr. I, 43; A. 109). And a police officer investigating the Weiss attack found footprints leading from the scene of the attack to the same house. (Tr. I, 62-64, 69-74.) But again, one of the officers who took petitioner's confession conceded that petitioner might have been told about the footprints before he confessed. (A. 127.)

4. Petitioner identified, from among a number of pocketbooks, one that he said he had taken from Miss Weiss. (A. 16; see also A. 108.) This was a pocketbook that Miss Weiss had purchased after the attack, which she testified was identical to the one taken in the attack, and which she had turned over to detectives from the prosecutor's office at the time of petitioner's interrogation. (Tr. I, 50-52.)

5. Petitioner, enumerating the contents of the Weiss pocketbook, mentioned a number of items (wallet, pen and pencil set, pill box, wrist watch, mirror, compact) (A. 16, 108) of sorts that Miss Weiss testified were in fact in the pocketbook taken from her (Tr. I, 51-52, 55). Miss Weiss had given a list of these items to the police immediately following the attack (Tr. I, 55-56), and that list was known to the officers who questioned petitioner (A. 76). One interrogating officer admitted raising the subject of the pill box with petitioner (A. 16, 76, 83), but asserted that neither he nor anyone else had divulged to petitioner the nature of the other contents of the pocketbook (A. 16). Interestingly, the transcript of petitioner's formal confession includes this question and answer: "Question: Did you notice a mirror, compact, handkerchief and other such things in the purse? Answer: Yes." (A. 108.) No such items are included in Miss Weiss' description of the contents of her purse. (Tr. I, 51-52.)

B. *Giambra Assault*

1. Petitioner's confessions place the Giambra assault (A. 111-114, 132-133) in approximately the location where Miss Giambra's body was in fact found (Tr. III, 38-40, 47-48,

85-86). However, the police admitted that there had been considerable newspaper publicity given to the Giambra affair, with descriptions and photographs of the location of the body. (A. 139-140.) Also, there were bloodstains on the spot for about a week, which might have been observed by anyone, like petitioner, living in the neighborhood. (A. 141.) (Petitioner testified that, after reading the newspaper accounts, he did go to the scene of the assault and could see where Miss Giambra had fallen. (Tr. III, 120-121.)) And see Appendix E, para. B(1) *infra*.

2. Petitioner's confessions recited that, immediately after the Giambra attack he saw and ran away from a crowd of people near 14th Avenue and 33rd Street. (A. 20, 138.) There were in fact numbers of persons coming and going in this area between 8:15 and 8:30 p.m. on the relevant night. (Tr. III, 89.) But again (as in para. A(2), *supra*), the significant corroborating detail appears only in the police versions of petitioner's oral confessions, where it may be an interpretative interpolation. Petitioner's signed confession says only that he "saw people," not a "crowd" or "a lot of people," in the area. (A. 112.)

3. Petitioner's confession described the pocketbook that he took from Miss Giambra as black leather, with handles and a big gold emblem. (A. 112.) This description substantially matches the bag that Miss Giambra must have carried on the night of the assault. (Tr. III, 97-98.) But, of course, the police would have had a description of the bag as well.*

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* The record is silent on this point. But, in view of routine police investigative methods in cases involving the theft of property, it is inconceivable that the interrogating detectives would not have had, three months after the offense, an exact description of the pocketbook.

APPENDIX E

Description of the Inconsistencies and Factual Discrepancies Found in Petitioner's Confessions

A. *Weiss Assault*

1. Throughout his several confessions, petitioner insisted that he had taken not only Miss Weiss' pocketbook but also a package that she was carrying. He described this package (A. 108) and said that he had buried it in a garbage container. (A. 15-16, 17, 46, 75, 108, 118.) In fact, as the police conceded (A. 15, 75, 118) the only package that Miss Weiss was carrying in addition to her pocketbook was never taken by her assailant (Tr. 1, 50, 60-61).

2. When petitioner first confessed to the Weiss assault, at 4:30 p.m., February 26, 1957, he said that he had hit Miss Weiss with a lead pipe, two feet long and 1½ inches wide (A. 15, 74) which he described as circular (A. 118). Later that night (A. 74-75), he said that the weapon was a different sort of instrument (*ibid.*), a perforated I-beam (A. 75). Petitioner's formal confession, late at night on February 26, describes the weapon as a piece of lead pipe, about two feet long, shaped like a cigarette pack, with holes in it. (A. 107.) On February 28, petitioner again described the weapon as an I-beam (A. 115); and on March 1 he drew a diagram of it in that shape (A. 115-116; Exhibit S-20). Exhaustive police searches failed to locate either the weapon (or weapons) used in the Weiss and Giambra assaults or any piece of metal like the ones petitioner described. (A. 116-117.)

3. In petitioner's first confession, at 4:30 p.m. on February 26, he said that he discarded the pipe used in the Weiss assault at the rear of the boarding house at 31st Street and 15th Avenue. (A. 15, 66, 76.) He stuck to this

story during a reenactment immediately following that confession. (A. 17-18.) However, later that evening, he changed his story. (A. 66.) His new version was that he buried the weapon after the Weiss attack, dug it up and used it in the Giambra attack nine months later, and then threw it in the river. (A. 66, 76, 107, 111-112, 131, 134.) Still later, he changed his story again. See para. B(3) *infra*.

4. In petitioner's first confession, also, he claimed that he had buried the Weiss bag in a plot of ground on 26th Street. (A. 18, 123-124.) His formal confession late the same night relates that he disposed of the bag in a garbage container at the rear of the boarding house at 31st Street and 15th Avenue. (A. 108-109.)

B. *Giambra Assault*

1. Petitioner's confessions relative to the Giambra attack recite that he first saw Miss Giambra walking up Wall Avenue sometime after 8:00 p.m. (A. 111, 132-133.) In fact, Miss Giambra left her house shortly after 8:00 p.m. that night to go to a church meeting (Tr. II, 287-291), and she was attacked and killed in the vicinity of a church near the spot where petitioner said he first saw her (Tr. III, 38-40, 47-48, 85-86). But, whether she walked or took a bus from her home to the church, no direct route from her starting point to her destination would have brought her up the street where petitioner claims he saw her walking. (A. 144-145.) Coming from Miss Giambra's house, Wall Avenue lay beyond the two entrances to the church which were open for the purpose of the meeting she was attending. (A. 145.)

2. Petitioner's version of the assault is that when Miss Giambra saw him approach her, she ran; he chased and caught her, then struck her. (A. 111-112, 133, 137.) As his confessions describe the event, she would have run at least 20 or 30 yards after seeing him. (A. 145-146; Tr. III, 125.)

But her version of the attack was simply: " 'He was following me. I heard footsteps, turned around, saw a man with a dark leather jacket on and he struck me.' " (Tr. III, 42.)

3. In his confessions of February 26 and reenactment of February 27 relative to the Giambra attack, petitioner said that he disposed of both the Giambra pocketbook and the weapon used in the Giambra assault by throwing them in the river. (A. 20-21, 112, 125.) On March 2, petitioner came up with a new story regarding the weapon: he first discarded it at the base of an umbrella-shaped tree in the park; then, two days later, retrieved it and threw it away in the same garbage container—behind the boarding house at 31st Street and 15th Avenue—where he threw the Weiss purse. (A. 125-126, 132.) This story cannot be considered a return to the version that he discarded the weapon at the rear of the boarding house following the Weiss attack and hence nine months before the Giambra attack. (See para. A(3) *supra*.) That version recited that he threw the weapon into a hedge in the boarding-house yard (A. 17-18), not into the garbage can.

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 127

WILLIAM MONKS,

Petitioner,

vs.

NEW JERSEY,

Respondent.

On Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF FOR RESPONDENT

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Cases Cited

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Dennis, Re, 20 App. Div. 2d 90, 245 N. Y. S. 2d 243 (1963) 7

D., In re, 290 N. Y. Supp. 2d 935 (App. Div. First Dept. 1968) 19

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Haley v. Ohio, 332 U. S. 596 (1948) 4, 6, 8, 11

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Johnson v. New Jersey, 384 U. S. 719 (1966) 4

Johnson v. State, 18 N. J. 422 (1955), 114 A. 2d 1 (1955), cert. denied, 350 U. S. 942 (1956) 28

Lisenba v. California, 314 U. S. 219 (1942) 3

Lyons v. Oklahoma, 322 U. S. 596 3

Miranda v. Arizona, 384 U. S. 436 (1966) 4, 10, 14, 18

People v. Lara, 62 Cal. Rptr. 586, 432 P. 2d 202 (1967) 7

Spano v. New York, 360 U. S. 315 (1959) 18

Specht v. Paterson, 386 U. S. 605 (1965) 29

State v. DiPaolo, 34 N. J. 279, 168 A. 2d 401 (1961), cert. denied, 368 U. S. 880 (1961) 27

State v. Pacheco, 38 N. J. 120, 183 A. 2d 54 (1962) 25

State v. Sikora, 44 N. J. 453, 210 A. 2d 293 (1965) 27

State v. Sinclair, 49 N. J. 525, 231 A. 2d 565 (1967) 25, 27

PAGE

State v. Smigelski, 30 N. J. 513, 154 A. 2d 1 (1959).... 27

State in the interest of Carlo, 48 N. J. 224, 225 A. 2d 110 (1966).....10, 17, 28, 29

State in re Steenback, 34 N. J. 89, 167 A. 2d 397 (1961) 27

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N.J.S.A. 2A:4-32 8

N.J.S.A. 2A:4-33 8

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Rule 40, 1(d)(2) (Rev. 1967) 5

Other Authorities Cited

47 Am. Jur. 2d (1969):

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Annotation:

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"Confessions", 79 Harv. L. Rev. (1966):

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"Inbau, Lie Detection and Criminal Interrogation" (2d ed. 1948):

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 127

WILLIAM MONKS,

Petitioner,

vs.

NEW JERSEY,

Respondent.

On Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF FOR RESPONDENT

Preliminary Statement

This court granted *certiorari* to review the judgment of affirmance by the Superior Court of New Jersey, Appellate Divison, of an adjudication of delinquency entered against petitioner, William Monks, then age 15, on December 11, 1957, and the sentence later clarified on May 2, 1958, to a life term under an amended statute, by the Passaic County Juvenile and Domestic Relations Court. —— U. S. ——, 23 L. Ed. 2d 216 (1969).

The adjudication of delinquency followed a trial on two petitions, charging petitioner with (1) the commission of an assault and robbery in Paterson on November 12, 1956, by striking Giovanna Giambra with a blunt instrument after stealing her purse while walking on the street, resulting in her death (A.3, 218), and (2) atrocious assault and battery and robbery of Nancy Weiss on February 24, 1956, while walking on the street, after stealing her purse and striking her with a blunt instrument, resulting in serious injuries (A.5, 219). N.J.S.A. 2A:4-14.

There was a full trial, petitioner was represented by counsel and a complete record made of the proceedings.

Petitioner was committed to Bordentown Reformatory for an indefinite term and later transferred in 1967 to State Prison where he now is in custody under a life sentence rendered under the statute of 1958. N.J.S.A. 2A:4-37(b)(2) (A218; 223).

Respondent agrees with the form of the statement of the first question presented by petitioner, as well as the constitutional and statutory provisions involved, as well as those parts of the statement of the case set forth by him under A and B. (Petitioner's brief p. 1-13 inc.).

We disagree with petitioner's statement of the second question involved because it was not raised nor presented in the lower state courts and was not set forth on the petition for *certiorari* filed in this court.

Respondent concedes that petitioner's statement of facts is substantially accurate and helpful because of the detailed and almost microscopic analysis of the evidence included in the appendix and the transcripts of the trial.

We differ however with the interpretation by petitioner of the evidence and the inferences from those facts in his

statement of the "Case against Petitioner", especially where the findings of the lower courts are assailed and the credibility of the witnesses are attacked, in direct opposition to the rule that on review those particular questions are to be resolved against petitioner as here, and reliance placed on those findings by this court where there is substantial evidence to support them. *Lisenba* v. *California*, 314 U. S. 219 (1942); *Lyons* v. *Oklahoma*, 322 U. S. 596.

We do not dispute the right of this court on review to make an independent examination of the question whether the confession in each instance was voluntary, as presented by petitioner. *Davis* v. *North Carolina*, 384 U. S. 737, 741-742 (1966).

Accordingly, respondent will present its view of the facts and the fair and legitimate inferences thereof under the argument to be made, instead of a separate prefatory recital of the facts.

Summary of Argument

1. The confessions in this case given on February 26, 1957 by petitioner were clearly given within the permitted limits after applying the "totality of circumstances" test to those confessions. *Johnson* v. *New Jersey*, 384 U. S. 719 (1966).

2. Considering the obvious restrained police questioning caused by the presence of Chester Jarmolowicz, the probation officer designated by the Judge of the Juvenile Court to protect petitioner, age 15, a juvenile from any coercion or misconduct by the police (actual or psychological) during interrogation, and who acted as his guardian and protector, it becomes manifest that the circumstances surrounding the questioning of petitioner in no way suggest coercion of any sort similar to the facts in *Haley* v. *Ohio*, 332 U. S. 596 (1948), relied on by petitioner. On the contrary, the confessions here were the product of an essentially free and unconstrained choice by its maker obtained without force, cajolery or trickery, and at no time was the will of petitioner overborne and his capacity for self-determination critically impaired. *Culombe* v. *Connecticut*, 367 U. S. 568 (1961). The presence of the court appointed probation officer during police interrogation distinguishes significantly this case from all other pre-*Miranda* decisions of this Court as the test to be applied in a case involving a juvenile confession.

3. The classification of petitioner's sentence as a life term on May 2, 1958, after the trial under the amended statute, N.J.S.A. 2A:4-37(b) effective after the date of the original commitment made on December 11, 1957, did not deprive petitioner of due process of law because made in his absence but rendered in the presence of his attorneys, because by the terms of the statute, the later commitment

was a translation of the phrase "delinquent" into the specific offense of first degree murder, and was made solely for the purpose of determining the crime committed and fixing the maximum sentence to be served, as the statute required—a beneficial change from prior law. This declaration did not involve a new finding of fact as claimed by petitioner but was based entirely on the evidence at the trial.

4. Petitioner at the trial defended on a denial of the offense alleged and shown to be a first degree felony murder arising out of a robbery under N.J.S.A. 2A:113-2, and if he claimed the post-trial right to show a lesser degree of murder or diminished responsibility at the time of determining the crime committed and fixing the maximum term of commitment, he would be admitting the offense which would be completely inconsistent with his original claim of denial and therefore detrimental to him.

5. The claim of illegal sentence argued by petitioner here was not raised nor presented in the lower state courts nor set forth on the petition for *certiorari* filed in this court, and for those reasons should not be considered by this court on review. *California* v. *Taylor*, 353 U. S. 553, 556 (1957); *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 428-429 (1964); Rule 40, 1(d)(2) of this court (Rev. 1967).

ARGUMENT.

POINT ONE

The oral and written confessions of petitioner were voluntary because they were the free choice of the maker, not obtained in violation of fundamental fairness, and the admission by the lower courts was based on substantial evidence and should not be disturbed.

Petitioner has asserted that his case is identical with *Haley* v. *Ohio*, 332 U. S. 596 (1948), and his argument starts with the claim that "all of petitioner's confessions following 8 P.M. were plainly involuntary—the extractions of police-applied pressure that overbore petitioner's will". (Petitioner's brief pages 58, 59). He concludes his argument by stating that the conduct and methods pursued by the police during interrogation of petitioner "make Haley's ordeal seem mild by comparison." (Petitioner's brief page 71).

We contend that the argument that petitioner's confession was extracted is untenable, and the application of *Haley* inapposite for reasons to be argued by us.

In *Haley*, the murder confession was obtained after 5 or 6 hours of police questioning, in relays, through the dead of night until about 5 A.M. when he confessed after being shown statements by two confederates who incriminated him. Haley was then confined in jail and held incommunicado for over three days during which time a lawyer retained by his mother was twice refused access to him, and his mother was not permitted to see him until more than five days after his confession.

Clearly, *Haley* has similarity to petitioner's case only because they were both 15 years of age at the time, but

from that point on the facts differ radically because petitioner had present during his interrogation by the Police the probation officer designated by the Judge of the Juvenile court to protect him from any possible abuse or coercion by the police interrogators.

Haley had no one at his side to serve as a restraining influence by the police during his ordeal.

Despite the fact that New Jersey law did not require notification or the actual presence of either the parents or a representative of the juvenile authorities before a juvenile can be questioned (*cf.* New York Family Court Act § 724; *Re: Dennis,* 20 App. Div. 2d 90, 245 N. Y. S. 2d 243 (1963); *Re: Gault,* 387 U. S. 1, 18 L. Ed. 2d 527 at 557, 558), the judge of the Juvenile Court in February 1957 permitted the interrogation of petitioner who was then in custody on unrelated purse snatching charges only in the presence of Mr. Jarmolowicz a probation officer. The probation officer was directed "to see to it that the boy was not abused in any way or taken advantage of or exhausted or placed in a position where he might say something that his physical condition probably would not allow him to say otherwise." (A.13, A.158). This was in accord with long standing proposals for the presence of an impartial observer during interrogation. "Confessions" 79 Harv. L. Rev. 940 (1966).

We contend and will show that the age of petitioner *per se* and the fact that interrogation took place in the presence of the probation officer designated by the Juvenile Court all establish the fact that the intellectual capacity and capability of petitioner to bear the interrogation did not result in having his will broken by the police and the confessions readily obtained by coercion practiced upon him. *Gallegos* v. *Colorado,* 370 U. S. 49 (1962); *People* v. *Lara,* 62 Cal. Rptr. 586, 432 P. 2d 202 (1967);

Annotation: 87 A. L. R. 2d 614; 47 Am. Jur. 2d §50, p. 1024 (1969); 79 Harv. L. Rev. 940 (1966).

Petitioner has realized that his case differs from *Haley* v. *Ohio, supra, Gallegos* v. *Colorado,* 370 U. S. 49, 8 L. Ed. 2d 325 (1962), and *Culombe* v. *Connecticut,* 367 U. S. 568, 6 L. Ed. 2d 1037 (1961) but has claimed similarity even though the order of the Judge of the Juvenile Court permitted interrogation of petitioner only in the presence of the probation officer and the restraining influence it was intended to serve and actually did have on the police.

In the cited cases, relied on by petitioner, the accused had no one to protect him while being interrogated, as appears in the case at bar.

It is a significant fact that the interrogation took place in the Court House and not at a police station, and thus free from the coercive atmosphere of the station house as provided by New Jersey law as to juveniles. See N.J. S.A. 2A:4-33. Also, under New Jersey law, a probation officer is the guardian of a juvenile in the custody of a Juvenile Court and is not a police officer or connected with the police. N.J.S.A. 2A:4-32.

It is apparent that our case differs from the cited decisions because the Juvenile Court here sought to protect the juvenile suspect from coercion, browbeating or other misconduct of the police, by cloaking him with a protector who was a guardian *pro tem* to insulate him from any and all forms of imposition or coercion to insure fair and reasonable interrogation. This is in accordance with the New Jersey statute, N.J.S.A. 2A:4-34 which mandates juveniles under 18 as wards of the court as well as protective practice of a juvenile.

Petitioner has realized this fundamental distinction between the cases cited and our case because he has at con-

siderable length and argument attacked the credibility of the probation officer, Jarmolowicz, in the performance of his duty, in the scope of his protection, and the claimed carelessness of his conduct and testimony, in order to demonstrate that his presence was not and did not curtail or restrain the police in the method of interrogation. (Petitioner's brief p. 46-52 inc., 69).

Monks claims that despite the presence of the probation officer, his confession was coerced, and which respondent contends amounts to an attack on the findings of the State courts to the contrary.

The fact is that both lower courts made express findings that the presence of the probation officer at the side of petitioner during police interrogation was a restraining influence on the police and which demonstrated the confession to be fundamentally fair (A.213-217, 224-229). There is substantial evidence to support those findings.

The lower courts also held that the purpose in providing the probation officer as a guardian *pro tem* was to protect Monks and have him answer questions, and not to permit the probation officer to serve as petitioner's attorney and prevent the police from learning the truth from the suspect (A.226, 227). If the Juvenile Court had intended that course, it would have denied permission to the police to interrogate petitioner. Instead, it allowed interrogation but only in the presence of the probation officer (A.13, 98, 128, 158).

The role of the probation officer here was to make certain that petitioner was not abused—it was not to counsel him against cooperation with the police, and above all, to permit petitioner to tell the truth if he had in fact committed the offenses then under investigation (A.90). It would have been highly improper for the probation officer to counsel petitioner to deny the offenses even though guil-

ty, or refuse to give any statement. *Miranda* v. *Arizona*, 384 U. S. 436 (1966), dissenting opinion, p. 747 fn.12. See *State in the interest of Carlo*, 48 N. J. 224, at p. 244, 245; 225 A. 2d 110 (1966).

It appeared here that there was an absence of protracted questioning, no relays of teams of detectives (A.92) conducting separate interrogation, no beatings, assaults, threats or show of force, (A.89, 90, 91). There was no loud talk, shouting or other conduct of a frightening nature to break the will or spirit of a suspect—a 15 year old lad. Petitioner has sought to infer misconduct by the police of this nature, but the evidence does not support the inference. Petitioner has argued but not demonstrated these assertions nor shown even a semblance of adolescent fantasy, fright or despair. *cf. In Re Gault, supra.*

The atmosphere during the period of interrogation was calm, quiet and dignified, and without any demonstration of imposition or coercion. Petitioner never appeared tired nor exhausted, and was well-fed and satisfied. It is only now in retrospect that petitioner has magnified his version of the events and labeled them as "coercion". The attack on Jarmolowicz and his failure to prevent the police from interrogating petitioner has a hollow sound because it would have prevented the truth from disclosure and his duty was not to direct the course of interrogation but to serve as an impartial observer.

The probation officer, Jarmolowicz, stated that petitioner at the time he signed the confessions (A.94) was alert, relaxed, bright and articulate (A.99). Above all, petitioner appeared relieved and free from his previous tension after he confessed, as compared with his conduct during the time he maintained his innocence (A.99). Petitioner admitted that he was not mistreated but was only tired

after a day of activity, and only because several hours of what appears as a long day were devoted to questioning because of the breaks for rest, consultation and meals during the day (A.95) and delay in the arrival of the court reporter at night (A.213).

Petitioner has argued that his age was the predominating factor which resulted in his confession despite the presence of Jarmolowicz, the probation officer, who should have but did not protect him from the influence of the police and the overpowering methods used by them in their interrogation. Was it the duty of the probation officer to advise his ward to remain silent and to frustrate the investigation? Respondent does not agree with that contention or function of the probation officer.

We submit that age alone is not that important a factor in the congeries of the totality of the circumstances, because as stated in *Haley* by Mr. Justice Frankfurter in his concurring opinion, "whether a confession of a lad of fifteen is 'voluntary' and as such admissible, or 'coerced' and thus wanting in due process, *is not a matter of mathematical computation*," *Haley, supra,* at page 603.

Petitioner at age 15 was above average and not a dull youngster. The evidence reveals that he was not easily confused when interrogated. He answered responsively and was not bewildered when confronted with his method of operation of purse snatching, and later burying the stolen purses (A. 209, 210), the subject of original inquiry by the police, when he was first taken into custody (A. 209, 210).

Petitioner was alert in his decisions relative to his affairs in response to interrogators, by holding his ground and agreeing to submit to the lie detector tests without fear, after expressing his doubts as to its value in elicit-

ing the truth (A. 128-129). He was hostile and combative at times and showed no fear of the police while in their presence (A. 129-130).

The evidence showed that petitioner was not readily open to suggestions, but was firm and resolute in his denials of complicity when first interrogated. Likewise, he was not prone to taking things at face value and asked questions and hesitated before making answers. Also, he was not inclined to make hasty decisions (A. 57, 18).

At the outset of his interrogation and throughout the entire period until it was terminated, petitioner was not frightened by the show of authority of the police because of his prior involvement with juvenile offenses (A. 199) and because he knew all about the power of police authority and his ability to take refuge in silence (A. 57, 76).

It appears that petitioner was not easily convinced of the extent of knowledge by the police of his complicity when first questioned. He did not yield to admissions until he realized after the confrontation with his friends Ogg and Stopford (A. 94) that the police knew considerably more than he was aware concerning his participation in the offenses because of his prior admissions to them (A. 76). After he recanted, his explanation at the trial that "he made it up" reveals his studied manner of evasion, not typical of a youth, but of a hardened criminal (A. 185-194 inc.).

The evidence showed that petitioner was not excessively trusting but relied on his own judgment and knew that sooner or later he would have to admit the offenses (A. 43) and make a judgment satisfactory to his own conscience entirely free from coercion (A. 165-185 inc.).

After the confessions were signed, the next day petitioner reenacted both offenses in the presence of the

police, without protest or repudiation of his confessions (A. 21, 44-48, 120, 122, 130-134).

Under all the circumstances, it appeared from the evidence that petitioner had an intelligence beyond his mere age, and coupled with the protection afforded him by the presence of Jarmolowicz, all combined to establish that the confessions were not coerced, nor was the will of petitioner overborne nor broken at the time he confessed, but his confessions were his free and voluntary acts as well as his unrestrained choice. Petitioner did not repudiate his confession of the Giambra affair until several weeks later on March 8, 1958 when he conferred with his assigned counsel (A. 205).

Respondent contends that these facts reveal that petitioner was well developed in his intellectual capacity and capabilities, and was not the fragile or frightened youth that he now claims, by his assertion that his will was overborne and the confessions were extracted from him by third-degree methods.

Petitioner was an experienced purse snatcher and armed with a weapon in order to forcibly succeed each attempt upon a victim.

It is evident that the nature of purse snatching coupled with assault of the victim who resists is one of the most serious types of "crime in the streets". It was prevalent in 1956, and it is even more so today. It is an offense usually committed at night when the victim cannot see or identify the assailant, and is unable to apprehend a fleet-footed juvenile. This record vividly portrays this description of the *modus operandi*.

It is for that reason and because the offense is committed in isolated areas that law enforcement officials have long been confronted with this offense as one of the

most serious problems of the cities. It is only after apprehension of one of a gang of juvenile offenders that this particular crime can be solved, and then only by painstaking investigation, interrogation, and ultimate confession. In these offenses, as mentioned, the victim seldom sees the assailant, and cannot readily identify him even after apprehension of suspects.

In our case, the method of operation and the area in which the offenses were committed were the clues which led the police to interrogate petitioner on the unsolved purse snatchings and murder and which pointed the finger at him.

Because of these factors concerning purse snatching at night on lonely streets there is demonstrated the difficulty of local police in their efforts to solve these crimes. It was particularly evident in 1956 when these offenses were committed by petitioner in the particular area in Paterson.

Since *Miranda* was decided on June 13, 1966, the problem of interrogation is different and police technique has been changed to accord with the warnings required by *Miranda*, and in the case of juveniles, as implemented by *In re Gault, supra.*

Despite these changes in police procedure, purse snatching, mugging and assault remain as one of the most serious "Crime in the streets" offenses which have caused consternation at all levels of government and have made the streets unsafe and driven the people into their homes behind closed doors and barricades and has made our city streets a veritable jungle.

Petitioner also claims that he was detained without access to family, friends or counsel for more than 10 days prior to the interrogation of February 26, 1967.

It is undisputed that petitioner was in custody for other similar purse snatching offenses, and was first interrogated for short periods and examined by the polygraph operator concerning those offenses. He was not worn down or pressed into submission by these procedures and had not indicated at first confrontation nor shown to be connected with the Giambra and Weiss assaults. He volunteered these offenses by a "slip of the tongue", when questioned about the others (A.13).

The fact that petitioner was in custody has not been shown to be of such weight or importance that it substantially contributed to his confession of the Giambra offense. As a matter of fact, he was not denied the right to discuss with, nor did he seek access from his parents, because petitioner was not living at home when first placed in custody, and he was not anxious to see them because they had complained to the authorities about his conduct (Tr. 111, 183-185, A.79, 208).

It is now only offered as a basis upon which to support the claim of denial of access by friends or parents as an element of coercion, when in truth and in fact his parents were not sought out by petitioner. He never requested their presence because he knew that his relations with them were strained and he would be chastised rather than helped by them (A.170).

Respondent contends that the fact of prolonged confinement at the Children's Shelter was equivocal and not of the significance which petitioner has placed upon it. It appeared that the only important interrogation took place on February 26, 1957, and even then with many interruptions and most of which was conducted by only one police officer.

Petitioner next claims that he was not warned of his rights and that the denial of these warnings was indica-

tive of the involuntary nature of the confessions. We disagree.

Petitioner was not of a garrulous nature and was courtwise and familiar with the ability to take refuge in silence similar to hardened criminals. He remained silent when he was first interrogated, and answered only when he felt safe with his responses. He made a few voluntary admissions at first but quickly recanted. He agreed to submit to a lie-detector test after stating that he doubted its value in arriving at the truth (A.57, 128-129). The evidence showed that the Police did in fact give petitioner warnings of his right to remain silent (A.22, 28, 38, 71, 95, 97, 154-155). Whether these warnings were adequate was merely a factor among others for the lower courts to consider in the final determination of whether the confession in each instance was voluntary, and which was a fact question under all the circumstances which the Appellate Division resolved in favor of the fundamental fairness of the confession.

Petitioner has argued that the method of interrogation by repeated inquiry, lengthy and continuous questioning on and off, the use of the polygraph, and the psychological effect of the mere presence of the lie detector device, all contributed to the breakdown of the will of petitioner especially because of the subtle form of interrogation by psychological treatment, and which all added up to the ultimate product of the overbearing treatment in obtaining the confessions.

The fact is that there were delays between interrogation, all of which were explained. There were no relays nor continuous questioning to evince or infer conduct to bring about the coerced confession.

Respondent contends that these facts have now been magnified by petitioner out of all proportion to the true

situation, and coupled with the shrill tones of "coercion" are now sought to be applied here in order to describe and berate the skillful and proper police interrogation.

The reality of the police conduct in the light of experience is that these crimes are seldom solved by the police except by skillful interrogation and painstaking investigation (*Culombe* v. *Connecticut*, 367 U. S. 568, 571 (1961) per Frankfurter, J.), and nothing appears to demonstrate that the confessions obtained here were wrung from petitioner. It would have been sheer stupidity and recklessness by the police to pursue coercive tactics such as deception, cajolery or trickery in the presence of probation officer Jarmolowicz, assigned by the Juvenile Court judge to prevent the very acts now argued as involuntary.

The fact is that the presence of the court officer operated as a retraint on the conduct of the Police, and the lower courts found as a fact that Jarmolowicz did in fact protect petitioner from abuse by the police. "Confessions," 37 Harv. L. Rev. 933, 940 (1966). The presence of a third person has long been held to be a protective device in obtaining a confession against a claim of coercion or truthfulness. It is almost a mandate in the case of a juvenile. *Harling* v. *United States*, 295 F. 2d 161, 163 (D. C. Cir. 1961); *State in the interest of Carlo*, 48 N. J. 224, 241, 225 A. 2d 110 (1966).

Petitioner has argued that the interrogation conducted by the police was similar to the questionable and subtle methods propounded by the suggestions set forth in "*Inbau*, Lie Detection and Criminal Interrogation," 110. (2d ed. 1948), especially to a youngster (Petitioner's brief pp. 65, 66, 67), and tantamount to "coercion". It is argued that these methods produced by the combined use of the lie-detector device and the psychological effect

of the interrogation resulted in undue imposition and all of which improperly brought forth the confessions.

These arguments are based on the subjective claims of petitioner rather than the facts revealed by the record and have not been clearly shown to be applicable to this petitioner because on the total record there is a complete absence of extraction of the confession but a voluntary act by him made in the presence of the probation officer designated by the Juvenile Court to be an impartial observer.

Respondent submits that on the overall consideration of the facts, it appears that the confessions given by petitioner in this case are typical of careful, planned, and fair police interrogation which brought them forth and which were proper and permissible.

It is seldom that one questioned before *Miranda* concerning a serious offense immediately and spontaneously admitted his guilt, even when inculpating facts may be weighty against him. An interrogation, no matter how conscientiously conducted, is naturally bound to be a tense occasion and to evoke apprehension, nervousness and a sense of pressure, no matter what the situation, which will be heightened in a person who knows he is guilty by consciousness of guilt and fear of legal penalty. It was always recognized that this is not the kind of normal stress, fear and pressure which can make the questioning unfair and a confession involuntary. In this case, petitioner, although a juvenile, did not appear to be subject to this normal reaction but acted by a reasoned choice after the exercise of his own judgment. *Spano v. New York*, 360 U. S. 315 (1959).

Respondent contends that this argument of tender age and others asserted by petitioner are in substance and

effect an attack on the fact findings of the lower State courts and should be rejected. Our case is not one where the fact findings upholding the validity of the confession by the lower courts are entirely without basis or substance. Likewise, it does not appear that the State courts arbitrarily concluded that the confessions were involuntary and not supported by ample evidence. On the contrary, the confessions found to be valid are based on substantial evidence and should be upheld.

An overall appraisal of a "child offender", as compared with a hardened juvenile criminal in a case involving a statement obtained from a minor was lately described by Mr. Justice Steuer of Appellate Division of New York in a dissenting opinion in the case of *In re D.*, 290 N. Y. Supp. 2d 935 at page 940 (App. Div.-First Dept. 1968) where he stated in a case similar to ours, the following:

> "Turning now to the more serious objection, it is claimed that taking the statement violated due process. And in that respect there is no quarrel on the issue of whether or not Matter of Gault, 387 U. S. 1, 87 S. Ct. 1428, is or is not to be given retroactive effect. What the constitution interdicts is not self-incrimination but involuntary self-incrimination. Unfortunately the tendency to pare away the limits of what is voluntary by successive interpretations of prior interpretations has left this distinction with such a small basis that it is not astonishing that it is either not recognized or passed over lightly with a modicum of lip service. And so it is that while the rule is announced that even in the absence of counsel the confession may be admissible provided the greatest care is taken to assure that it is voluntary (Matter of Gault, supra, at 55, 87 S. Ct. 1428), little by little circumstances

in a particular case which are held to show a lack of voluntary admission are further extended in the next one. In Matter of William L. (29 A. D. 2d 182, 287 N. Y. S. 2d 218), the boy's mother was advised by the police that the matter was not serious and she was discouraged from carrying out her original plan to accompany him. Here she was invited to attend, but this is discounted because the officer described the incident as a stabbing and not a homicide. Many years ago a distinguished jurist warned against just such a *ratio decidendi*, which he called 'a jurisprudence of conceptions' (Roscoe Pound, 'Mechanical Jurisprudence', 8 Col. L. R. 605, 610, quoted by Cardozo, J. in Hynes v. New York C. R. Co., 231 N. Y. 229, 235, 131 N. E. 898, 900, 17 A. L. R. 803). The net result is that while voluntariness is shown by uncontested facts, involuntariness is found by quotations from prior decisions.

"When the fog of interpretive miasma is cleared away and the real question of whether this was a voluntary statement is looked into, there is no doubt at all. A reading of the statement plus the appellant's answers to the qualifying questions, which the majority gratuitously designates as a 'token compliance', explain the situation beyond cavil. Aaron D. was not only willing to explain his adventure, he was anxious to do so. He had been one of a group which killed a man, which fact, per se, made him a tiger in the jungle which his predecessors have made of our streets. He was as eager to have this known as a scholar of like age is to display a Phi Beta Kappa key. District attorneys experienced in such fields repeatedly tell us that this and similar motives (not conscience) prompt

the statements that are so frequently made. (Compare, 'Interrogations', 76 Yale L. J. 1519, 1562-1565 (1967). To say that this statement was not voluntary is to give the word a new and tortured meaning.

"There can be little doubt that the net effect is that the appellant, nauseatingly described as 'this child', will appreciate and react to this disposition by further conduct along the same lines. How else is the staggering increase in serious juvenile crime to be accounted for other than by the knowledge that no felony, however serious, is punishable? The guaranty of due process is a shield to prevent the exaction of forced incriminatory admissions, not a legal excuse for the concealment of crime."

The several arguments made here by petitioner are completely answered in our view by the Appellate Division of New Jersey in describing whether the confessions were coerced or were voluntary, as follows (A.226, 227):

"Defendant's first contention is that his admissions and confessions were obtained in violation of due process and were, therefore, improperly received in evidence.

The record supports the trial court's finding that the police interrogation was fair, was conducted in the presence of a court-appointed officer to insure its fairness and who testified thereto, and was not the product of force, fear or promise of any kind. The questioning was not prolonged at any one time and there were frequent breaks. The initial interrogations were not only brief but pertained primarily to the unrelated purse snatchings

for which defendant had originally been taken into custody.

The statements were taken late in the evening but this was due to defendant's withholding his willingness to give them until after dinner and the delay in getting the stenographer, who did not arrive until 10:30 P.M. The statement concerning the Weiss attack was prepared from 10:45 to 11:30 P.M. From midnight until 1 A.M., the statement concerning the Giambra offense was taken. Defendant then signed both after making a few corrections.

These confessions were made long before *Escobedo* v. *Illinois*, 378 U. S. 478 (1964) and *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Defendant concedes that these cases are not applicable, not being retroactive under *Johnson* v. *New Jersey*, 384 U. S. 719 (1966). We agree with the trial court's finding that they were voluntarily made and were obtained under circumstances fundamentally fair. The court-appointed officer who supervised the interrogation as an officer of the court, was in attendance at all critical moments to insure fundamental fairness and verified that fact.

Defendant cites in support of his position *Haley* v. *Ohio*, 332 U. S. 596 (1948); *Gallegos* v. *Colorado*, 370 U. S. 49 (1962); *State in the Interest of Carlo*, 48 N. J. 224 (1966), and *In re Gault*, 387 U. S. 1 (1967). These cases are factually distinguishable from the instant case. In *Haley*, a confession of murder by a 15-year-old boy was held involuntary because he was questioned by the police, working in relays, hour after hour, with no one at his side to see that the police went so far and no further.

to see that they stopped short of coercion. Such was not the situation here. In *Carlo,* the youths underwent continuous questioning for over ten hours, in the hostile atmosphere of a police station, while repeated efforts on the part of their parents to see them were rebuffed. In a similar way, the other cited cases may be distinguished.

In brief, the decision in each case depends upon the totality of its own circumstances. Here, no physical coercion was employed. Defendant was not subjected to long and gruelling interrogations by relays of police officers. While his parents or an attorney were not present, their presence was not sought and defendant had by his side an experienced probation officer, at the court's direction, to act as his guardian during the questioning. Defendant's versions of the attacks were fully consistent with the physical evidence. His statements were taken by an official court reporter in question and answer form and reproduced verbatim on a typewriter. Thus, there was every effort made to insure an accurate reproduction under fundamentally fair circumstances."

Respondent claims that upon the basis of the application of the totality of circumstances test to the facts of this case, the confessions were voluntary and valid and the action of the Superior Court of New Jersey, Appellate Division, should be affirmed.

The assertion by petitioner that the confessions which were approved by the lower courts "is an incomprehensible regression of the era of the third-degree" is entirely without support in the facts or the law and is a diatribe against the judgment rather than legal argument. (Petitioner's Brief p. 71).

We submit that the argument made under this point by petitioner is lacking in merit and substance and should be rejected.

POINT TWO

The classification of petitioner's commitment on the basis of first degree murder and fixing a life term under N.J.S.A. 2A:113-2 and N.J.S. 2A:113-4 was not based on new findings of fact made in his absence but was based on the evidence at the trial and hence no denial of due process but was a mere declaration of the specific crime committed in order to fix the maximum term under the amended statute, N.J.S.A. 2A:4-37(b).

Under this point, petitioner claims that his "sentence of imprisonment for the maximum term of his life based upon factual determinations made in his absence and without personal notice or hearing deprives him of his liberty without due process of law."

The argument is based upon the fact that at the hearing held in the presence of petitioner's counsel and the prosecutor for the purpose of fixing the maximum term of sentence, the court made a "new finding of fact" that denominated the crime, first degree murder, which was not an issue in his case (A:220-222 inc.). He claims that this issue was not litigated nor adjudicated at the trial.

Respondent disputes this assertion as a fact, and also its interpretation of the statute as a matter of law concerning the purpose of the amended statute which required the hearing called for by the Juvenile Court in order to advise the Superintendent of the Reformatory what crime was committed by petitioner in order to assist

him in fixing his maximum sentence on the records of the correctional institution, N.J.S.A. 2A:4-37(b), because the original commitment found petitioner to be "delinquent." (A.218).

The State charged petitioner at the trial in the *Giambra* case with having stolen her purse after striking her with a blunt instrument and which resulted in the death of the victim (A.3).

Petitioner's defense at the trial was a denial of the charge and, in addition, he claimed an alibi (A.164).

Petitioner did not defend on the basis of diminished responsibility nor other facts to show that the offense charged as a felony murder or murder in the first degree, was of a different degree or offense.

Hence, the issue raised by petitioner and litigated at the trial of the offense charged, if tried as an adult, was first degree murder or not guilty.

It is established that under New Jersey law a homicide committed in the course of the commission or the attempt to commit robbery is denominated as first degree murder, N.J.S.A. 2:113-2, and punishable by death or by recommendation of the jury to life imprisonment. N.J.S.A. 8A:113-4. *State* v. *Sinclair*, 49 N. J. 525, 231 A. 2d 565 (1967), *State* v. *Pacheco*, 38 N. J. 120, 131, 183 A. 2d 54 (1962), N.J.S.A. 2A:113-1.

When the Juvenile Court on December 11, 1957, adjudicated petitioner as delinquent (A.218), it recited in its findings of fact that petitioner was guilty of murder in the Giambra case (A.218).

After the statute was enacted on January 6, 1958 in order to provide for maximum terms of punishment concerning juveniles, N.J.S.A. 2A:4-37(b) and which was an

amendment of the prior act, which provided for indeterminate confinement, the juvenile court was requested by the Reformatory to determine what crime was committed in order to fix the maximum term to be served by petitioner (A.220).

At the hearing held in the presence of all counsel resulting in the letter of May 2, 1958 to the Superintendent of the Reformatory, the evidence at the trial was reviewed, and the Juvenile Court stated that the crime proven at the trial was first degree murder (A.222) and under the facts resulted from a death while in the perpetration of a robbery (A.3, A.220). This offense in New Jersey is punishable by death or life imprisonment upon the recommendation of the jury. N.J.S.A. 2A:113-4.

The direction made was not a "new finding of fact" by the juvenile court when it found the delinquency to be first degree murder but was a declaration in specific terms of the crime charged, tried, and established against petitioner and based on all the evidence litigated and adjudicated at the trial (A.215, A.229).

Petitioner has not shown nor demonstrated in what respect a "new finding of fact" was made as the basis of his sentence to life imprisonment. There was no necessity for additional evidence, nor further opportunity to show facts in mitigation of punishment at the hearing held to determine what crime was committed by petitioner, because at the conclusion of the trial, Judge Spernow found that the "Giambra incident was a brutal murder." (A.215).

The statute as amended in January, 1958, did not provide for designating the commitment of a juvenile for a term of years but was enacted (A.220) to "describe the offense committed for the purpose of fixing the maximum sentence." N.J.S.A. 2A:4-37(b). The Superintendent specifically requested whether the homicide was first degree murder, second degree murder or manslaughter (A.220).

The reason for this hearing was to determine the single question of translating "delinquency" and describing the crime committed and the maximum term in order to alleviate the prior evil where the juvenile was sentenced to an indefinite term for any offense including homicide if committed by an adult. N.J.S.A. 2A:4-37. *State* v. *Smigelski*, 30 N. J. 518, 526-527, 154 A. 2d 1 (1959). *State in re Steenback*, 38 N. J. 89, 99, 167 A. 2d 397 (1961).

Hence, the question of a reduced degree of murder could only be shown at the trial and not at the hearing held to determine the crime committed at the trial, in order to fix the maximum term of sentence on the records of the correctional institution.

If petitioner at the trial had defended on the basis of a mental state which would have reduced the degree of the crime, caused by drunkenness, or other trait, (*State* v. *Sikora*, 44 N. J. 453, 210 A. 2d 293 (1965)), deficiency or condition which would have shown a mental operation of diminished responsibility (*State* v. *DiPaolo*, 34 N. J. 279, 168 A. 2d 401 (1961) cert. denied 368 U. S. 880 (1961)), then, of course, at the hearing held under the amended statute, those facts presented at the trial would have been considered in determining what crime was committed and fixing the maximum term.

But, that was not the issue litigated at the trial because the state showed a first degree felony murder and petitioner defended entirely on a denial, and hence the alternatives at the trial were first degree murder or not guilty. *State* v. *Sinclair*, *supra*, 49 N. J. at page 540.

It would seem that if petitioner attempted to show at the hearing to determine "what crime was committed" in order to assist in fixing his maximum sentence, he would have repudiated his former outright denial of the offense and admitted the crime—a position entirely inconsistent

with his defense at the trial. He had already taken an appeal (A.222) and this change of position would have prejudiced him before the Appellate Courts, including this court where he has relied entirely on his innocence and repudiation of his confession.

This statute involved here is plain and simple. It was intended to provide for specific delineation of all offenses committed by juveniles as well as homicide offenses in order to fix a maximum term of sentence for juveniles, to age 21 as the terminal date, a provision not theretofore provided. *Johnson* v. *State*, 18 N. J. 422 (1955), 114 A. 2d 1 (1955), cert. denied 350 U. S. 942 (1956). In the case of homicides and in order to fix the term, it was necessary to translate "delinquency" in a case as here of a homicide adjudication, to specify the offense as first degree murder, second degree murder or manslaughter, the several degrees of homicide (A.220).

In that respect, if from the facts at the trial the adjudication of delinquency constituted in fact and in law first degree murder, the maximum sentence was life, N.J.S.A. 2:113-4, if second degree murder, the maximum sentence was 30 years, N.J.S.A. 2A:113-4, and if, in fact, manslaughter, the maximum term was ten years. N.J.S.A. 2A:113-5.

Respondent claims that this recital indicates precisely the purpose and spirit of the 1968 amendment of N.J.S.A. 2A:4-37(b) concerning maximum sentences—a feature designed to fix age 21 as the terminal date of confinement of all offenses less than homicide, and life, 30 years and 10 years as the maximum period of confinement of first degree murder, second degree murder and manslaughter, the three homicide offenses under New Jersey law.

This very interpretation was made by the New Jersey Supreme Court in *State in Interest of Carlo*, 48 N. J. 224,

225 A. 2d 110 (1966) and was followed here by this court in *Re: Gault*, 387 U. S. 1, 33 (1967).

The present argument of petitioner which claims that he was subjected to a proceeding which produced a "new finding of fact" in his absence and denied him "due process of law", is based entirely on an assertion which does not relate to post-trial procedures. The case of *Specht* v. *Paterson*, 386 U. S. 605 (1965) is completely inapplicable here and differs completely on the facts.

Petitioner's argument that the issue of first degree murder was not litigated nor adjudicated at the trial in the *Giambra* case is completely unfounded in fact because that was the only issue raised by petitioner by his denial and alibi to the facts which charged first degree felony murder.

The assertion that because the argument is couched in terms of constitutional doctrine, and particularly "due process", has not revealed how and in what respect his rights were invaded because of his absence from the hearing held only to determine what crime was committed, in order to establish his maximum sentence.

Besides, he was not harmed in any manner, and his argument is entirely without basis where as here he was represented by counsel at the hearing and no action was taken which caused any prejudice. On the contrary, he was benefited because he first learned his maximum term and when he becomes eligible for parole a condition he did not know when adjudicated and committed on December 12, 1967 (A.218).

We submit that the argument presented by petitioner under this point is lacking in merit and substance and should be rejected.

Respondent has presented its argument under this point in order to assist the court in the event that it decides to review the question, and has not waived its contention that because this question was not raised nor presented in the state courts, nor set forth on the petition for *certiorari* filed in this court, that it should not be reviewed here.

We disagree with petitioner concerning his claim that the question presented is fairly embraced in the question dealing with the *ex post facto* question considered by the Appellate Division of New Jersey (A. 228, 229). Respondent claims that the questions are distinct and clearly different, and we submit that the several arguments demonstrate and reveal the difference.

In any event, we submit that the question should not be reviewed by this court because of the omission to argue or present the matter in the state courts, as settled by the practice of this court.

CONCLUSION

Respondent submits that the judgment of the Superior Court of New Jersey, Appellate Division here for review, is correct and should be affirmed.

Dated: February 5, 1970.

Respectfully submitted,

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